



U.S. Department
of Transportation
**Federal Aviation
Administration**

Advisory Circular

Subject: **ACCESS TO AIRPORT TERMINALS BY
INDIVIDUALS WITH DISABILITIES**

Date: DRAFT

Initiated by: AAS-100

AC No: 150/5360-XX

Change:

1. PURPOSE. The purpose of this Advisory Circular (AC) is to present and reconcile the Federal accessibility regulations implementing the Americans with Disabilities Act of 1990 (ADA); the Air Carrier Access Act of 1986 (ACAA); the Rehabilitation Act of 1973, as amended (RA); and the Architectural Barriers Act of 1968, as amended (ABA) which affect the architectural or program accessibility of airports in the U. S. transportation system and employment opportunities on these airports for individuals with disabilities.

2. BACKGROUND. This advisory circular is designed to assist airports in complying with the current laws and regulations regarding individuals with disabilities by: (1) identifying the relevant statutes and regulations which impact upon airports; (2) presenting in a single document the main features of each of the statutes and regulations; (3) providing legal citations to facilitate research; (4) identifying conflicts, differences, or unresolved issues in the regulations and guidance; (5) listing sources of assistance or additional information; and (6) identifying Final Rules, as well as Notices of Proposed Rulemaking (NPRM), Advance Notices of Proposed Rulemaking (ANPRM), Supplementary Notices of Proposed Rulemaking (SNPRM), and Interim Final Rules, to assist the airport community and public to differentiate between established requirements and unresolved issues.

3. SCOPE. The following standards and regulations were used as basis for this advisory circular. The architectural standards, in many instances, also have been published as regulations, as appendices thereto, or have been established as requirements through regulatory action. The architectural standards, including those published as regulations, are listed in Paragraph 3.a. of this AC. Other regulations, dealing with requirements under the accessibility acts, that served as basis for this AC, appear in Paragraph 3.b.

a. Architectural Standards. The following architectural standards were used as basis for this AC, either to determine existing requirements or to determine conflicts and unresolved issues:

(1) **"Uniform Federal Accessibility Standards" (UFAS).** The UFAS were established by four standard-setting agencies to prescribe standards for buildings subject to the ABA. The standard-setting agencies are the General Services Administration (GSA), the Department of Defense (DOD), the Department of Housing and Urban Development (HUD), and the U. S. Postal Service (USPS). The UFAS initially were published in 49 FR 31528, August 7, 1984. They were adopted and incorporated in the standards, regulations, or directives of the standard setting agencies, as follows: GSA, 41 CFR 101-19.6, August 7, 1984; HUD, 24 CFR Part 40, October 4, 1984; USPS, Handbook RE-4, "Standards for Facility Accessibility by the Physically Handicapped," November 15, 1984; and DOD, revision of Chapter 18 of DOD 4270.1-M, "Construction Criteria," by memorandum, May 8, 1985.

(2) **"Americans with Disabilities Act Accessibility Guidelines" (ADAAG).** The ADAAG were issued, amended, and corrected as follows:

(i) **"ADAAG for Buildings and Facilities in Places of Public Accommodation and Commercial Facilities, under Title III of the ADA."** These were issued by the Architectural and Transportation

Barriers Compliance Board (ATBCB), 36 CFR Part 1191, 56 FR 35408, July 26, 1991, effective as of that date, as corrected at 56 FR 38174, August 12, 1991.

(ii) **Amendment to Final ADAAG.** This amendment, issued by the ATBCB, 36 CFR Part 1191, 56 FR 45500, September 6, 1991, effective as of that date, set additional requirements for transportation facilities covered by Title III of the ADA, under the jurisdiction of the Department of Justice (DOJ) and for publicly operated transportation facilities covered by Title II of the ADA, under the jurisdiction of the Department of Transportation (DOT). Corrected by the ATBCB at 57 FR 1393, January 14, 1992.

(iii) **Amendment to Final ADAAG.** This amendment, issued by the ATBCB, 57 FR 1393, January 14, 1992, effective as of that date, and further jointly amended by the ATBCB and the DOT, 58 FR 38204, July 15, 1993, effective August 16, 1993, adopted changes to reach range requirements for automated teller machines (ATMs) and fare vending machines.

(iv) **Appendix A, "ADA Accessibility Guidelines for Buildings and Facilities," to 49 CFR Part 37, "Transportation Services for Individuals with Disabilities."** Appendix A was published with 49 CFR Part 37 by the DOT in 56 FR 45621, September 6, 1991, effective October 7, 1991. These serve as ADA accessibility requirements for American transportation facilities.

(v) **DOT Final Rule, 49 CFR Part 38, "ADA Accessibility Specifications."** These serve as minimum guidelines for accessibility in the transportation vehicles required to be accessible by the ADA, as set forth in 49 CFR Part 37 by the DOT. It was issued by the DOT in 56 FR 45756, September 6, 1991, effective October 7, 1991.

(vi) **ATBCB NPRM, 36 CFR Part 1191, "ADA Accessibility Guidelines for Buildings and Facilities; State and Local Government Facilities."** This NPRM proposed to provide additional guidance to the DOJ for accessibility standards for new construction and alterations of State and local government facilities, covered by Title II of the ADA, through amendments to 36 CFR Part 1191, 57 FR 60612, December 21, 1992.

(vii) **DOJ Final Rule, 28 CFR Part 36, Implementing Title III of the ADA.** Published by the DOJ in 58 FR 2674, January 18, 1994, effective February 17, 1994, this final rule adopted guidelines published by the ATBCB on September 6, 1991, as amended by the ATBCB on January 14, 1992, effective as of that date, and as further jointly amended on July 15, 1993 by the ATBCB and the DOT, 28 CFR Part 36, effective as of August 16, 1993.

(viii) **ATBCB, DOJ, and DOT Joint Final Rule, 36 CFR Part 1191, 28 CFR Part 36, and 49 CFR Part 37, Respectively.** This was published in 59 FR 17442, April 12, 1994. This joint final rule suspended ADAAG requirements for detectable warnings at curb ramps, hazardous vehicular areas, and reflecting pools until July 26, 1996. Effective May 12, 1994.

(ix) **ATBCB Interim Final Rule.** Published in 59 FR 31676, June 20, 1994, this established accessibility standards for new construction and alterations of State and local governments covered by Title II of The ADA. The ATBCB also announced its intention to develop guidelines based on ADAAG that could be adopted as standards, replacing UFAS, by the standard-setting agencies for Federally financed facilities covered by the ABA. The ATBCB proposed that DOJ and DOT do likewise in regard to new construction and alterations of State and Local government facilities covered by Title II of the ADA. The DOJ and DOT published NPRMs seeking comment on these proposals. The DOT NPRM, "Transportation for Individuals," regarding amendment of 49 CFR Parts 27 and 37, was published in 59 FR 31818, June 20, 1994. The DOJ NPRM was published June 20, 1994, 59 FR 31808. The DOJ has added two new sections to the ADAAG, thereby including coverage of judiciary and regulatory agency buildings. Some standard-setting agencies have developed memoranda of understanding, advising recipients to use ADAAG whenever its requirements are more comprehensive than those of UFAS. Work on the overall proposal, however, still is in process.

(3) **The American National Standards Institute Standards (ANSI).** The "Specifications for Making Buildings and Facilities Accessible to and Usable by the Physically Handicapped," originally were adopted as ANSI A117.1. At the time UFAS was adopted, ANSI A117.1-1980 specifications were in effect.

b. Regulations. The following regulations were used as basis for this advisory circular:

(1) Rehabilitation Act.

(i) DOT Final Rule, 49 CFR Part 27, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance." This final rule was issued by the DOT, implementing Section 504 of the RA of 1973 (29 U.S.C. 794), 44 FR 31442, May 31, 1979, effective date, July 2, 1979.

(ii) DOJ Final Rule, 28 CFR Part 41, "Coordination of Implementation of Section 504 of the RA." This final rule implements Executive Order 12250, which requires the DOJ to coordinate the implementation of section 504 of the RA of 1973. It was published in 43 FR 2132, Jan. 13, 1978, effective as of that date; redesignated and amended at 46 FR 40686, 40687, Aug. 11, 1981, effective as of that date.

(iii) DOT NPRM, 49 CFR Part 27, "Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs." This NPRM was published in 55 FR 8081, March 6, 1990. It proposed to amend 49 CFR 27.71 to harmonize it with 14 CFR 382.23 of the regulation implementing the ACAA. The amendment addressed requirements for terminal facilities and services. The NPRM also proposed to add accessibility requirements for airport transportation systems; to require airport operators and air carriers to settle in their contracts the issues of who is responsible for compliance with accessibility requirements; to change the definition of "air carrier airport" to restrict accessibility standards to those airports with scheduled airline service that enplanes at least 2,500 passengers per year; and to make the Section 504 rule applicable to air carriers receiving Federal financial assistance under the Essential Air Service (EAS) program. It also would have allowed the airport to be considered accessible "when viewed as a whole." The NPRM sought specific comment on cost and feasibility problems; time frames for compliance; coverage of contractors and concessionaires; and distinctions between concessionaires and actual transportation facilities.

(iv) DOT Final Rule, 49 CFR Part 27, "Transportation for Individuals with a Disability." This final rule was published in 56 FR 45621, September 6, 1991, amending 49 CFR Part 27, to make it compatible with ADA requirements. Basically, the amended rule makes compliance with Section 504 of the RA dependent upon compliance with the requirements of the ADA. It was effective October 7, 1991, except the deletions of Subparts B and C thereof and the redesignation of Subpart F as Subpart C and Subpart D as Subpart B, which were effective January 26, 1992. It also clarifies that the Section 504 requirements apply to private parties receiving Federal financial assistance, as well as to public entities receiving such assistance. Finally, it clarifies that entities subject to 49 CFR Part 37, implementing the ADA, must utilize the design, construction, and alteration standards in Appendix A of 49 CFR Part 37, while other entities may select either the Appendix A standards or the UFAS.

(2) Air Carrier Access Act.

(i) DOT Final Rule, 14 CFR Part 382, "Nondiscrimination on the Basis of Handicap in Air Travel," This final rule was published in 55 FR 8008, March 6, 1990, effective April 5, 1990, implementing the ACAA of 1986 (49 U.S.C.S. app. Section 1301 (1991)).

(ii) DOT SNPRM, 14 CFR Part 382, "Nondiscrimination on the Basis of Handicap in Air Travel." This SNPRM was published in 55 FR 8076, March 6, 1990. It requested comment on 3 proposals: (1) whether terminal transportation systems should be required to be accessible (echoing the request for comments in the NPRM relating to Section 504 of the RA, published on March 6, 1990); (2) whether the DOT should adopt standards for boarding chairs suggested by the ATBCB; and (3) whether provisions should be made for substitute service in cases where persons are unable to board a particular aircraft.

(iii) DOT ANPRM, 14 CFR Part 382, "Nondiscrimination on the Basis of Handicap in Air Travel." This SNPRM was published in 55 FR 8078, March 6, 1990. It requested comments on two features: (1)

lifts and other boarding equipment for use in regional and commuter aircraft and in air taxis; and (2) accessible lavatories in narrowbody (i.e., aircraft with only 1 aisle) and smaller aircraft.

(iv) **DOT Final Rule, 14 CFR Part 382.** This final rule was published in 55 FR 12236, Apr. 3, 1990, amending Part 382 to extend the compliance date to June 4, 1990 for certain requirements and requesting comments on whether a further extension should be given.

(v) **DOT Final Rule, 14 CFR Part 382.** This final rule was published in 55 FR 23539, June 11, 1990, effective June 4, 1990, extending the compliance dates for certain requirements to August 5, 1990, and for certain others to October 5, 1990.

(3) Architectural Barriers Act.

(i) **ATBCB Final Rule, 36 CFR Part 1150, "Practice and Procedure for Compliance Hearings."** This rule of the ATBCB implements Section 502(b)(1) of the RA of 1973, as amended, (29 U.S.C. 792), by establishing rules of procedure for public hearings which ensure compliance with standards issued under the ABA of 1968, as amended (42 U.S.C. 4151 et seq.). It was published in 47 FR 33862, August 4, 1982, effective September 3, 1982.

(ii) **ATBCB Final Rule, 36 CFR Part 1190, "Minimum Guidelines and Requirements for Accessible Design."** This rule of the ATBCB implements section 502(b)(7) of the RA of 1973 (29 U.S.C. 792(b)(7), as amended), which requires the ATBCB to establish minimum guidelines and requirements for standards issued under the ABA of 1968 (42 U.S.C. 4151 et seq.).

(4) Americans with Disabilities Act.

(i) **Title I - Employment - 29 CFR Part 1630, "Equal Employment Opportunities for Individuals with Disabilities; 29 CFR Parts 1602 and 1627, "Recordkeeping and Reporting under Title VII of the Civil Rights Act of 1964 and Title I of the ADA."** The rule for Part 1630 was issued by the Equal Employment Opportunity Commission (EEOC) in 56 FR 35725 (Part V at 2), effective July 26, 1992. The rules for Parts 1602 and 1627 were issued in 56 FR 35725 at 35753 (Part V at 29), July 26, 1991, effective August 26, 1991.

(ii) Title II - Services, Programs, and Activities

(A) **Subtitle A - State and Local Governments, 28 CFR Part 35, "Nondiscrimination on the Basis of Disability in State and Local Government Services."** This rule was issued by the DOJ in 56 FR 35693, Part IV, July 26, 1991, effective January 26, 1992.

(B) **Subpart B - Transportation Provided by Public Entities, and Title III, Public Accommodations Provided by Private Entities, 49 CFR Parts 27, 37, and 38.** The DOT issued "Transportation for Individuals with Disabilities," 49 CFR Parts 27, 37, and 38, in 56 FR 45583, September 6, 1991. Parts 37 and 38 became effective October 7, 1991. Amendments to Part 27 became effective October 7, 1991, except the deletions of subparts B and C and the redesignation of Subpart F as Subpart C and Subpart D as Subpart B became effective January 26, 1992. On November 17, 1992, the DOT published an NPRM, "Transportation for Individuals with Disabilities," in 57 FR 54210, proposed to amend 49 CFR Part 37. Three of the proposals, if enacted as a final rule, would impact on certain transportation providers on or under contract to airports: (1) a proposed modification would specify that transportation providers must permit standees to use lifts which have handrails and/or which otherwise can accommodate standees; (2) a second proposal would clarify procedures for obtaining determinations concerning equivalent facilitation in vehicles; and (3) the third proposal would clarify the responsibility of transit providers to make seat or wheelchair securement available to people who need it.

(iii) Title III - Places of Public Accommodation by Private Entities, 28 CFR Part 36, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities." This rule was published by the DOJ in 56 FR 35543, July 26, 1991, effective January 26, 1992.

c. Other Guidelines or Manuals

(1) EEOC, "A Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act, January 1992

(2) DOJ, "The Americans with Disabilities Act, Title II Technical Assistance Manual," covering State and Local Government Programs and Services.

(3) DOJ, "Americans with Disabilities Act, Title II, Technical Assistance Manual," January 1993 Supplement.

(4) EEOC and DOJ, "Americans with Disabilities Handbook," October 1991.

(5) Air Transport Association of American/American Association of Airport Executives/Airports Council International-North America/Airports Consultants Council, "Guidelines for Airport Signing and Graphics, Terminals and Landside," Second Edition 1994.

(6) Federal Aviation Administration Advisory (FAA) Circular No. 150/5220-21. "Guide Specification for Lifts Used to Board Airline Passengers with Mobility Impairments," February 10, 1993, initiated by the Office of Airport Safety and Standards, AAS-100, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591.

Note: Several documents identified as an "interim" final rule, a "Notice of Proposed Rulemaking," an Advanced Notice of Proposed Rulemaking, or a Supplemental Notice of Proposed Rulemaking have been included in the above listing because they identify the sequence of events or identify unresolved issues, conflicts, or attempts to resolve differences. Appropriate changes will be made to this advisory circular as the latter are settled. The FAA believes the inclusion of this information will clarify the current status of the regulations and standards and will alert airport operators and owners to possible future action by the lead agencies.

DIRECTOR, OFFICE OF AIRPORT SAFETY AND STANDARDS

CONTENTS

CHAPTER 1. INTRODUCTION

1. BASIS.....	1
2. TO 199. RESERVED.....	1

CHAPTER 2. ARCHITECTURAL BARRIERS ACT OF 1968, AS AMENDED

200. BACKGROUND INFORMATION.....	3
201. COVERAGE.....	3
202. GENERAL APPLICABILITY AND RESPONSIBILITY.....	3
203. EXCEPTIONS TO COMPLIANCE REQUIREMENTS.....	4
204. COMPLIANCE, ENFORCEMENT, AND REMEDIES.....	5
205. IDENTIFICATION OF CONFLICTS AND RESOLUTIONS, OUTSTANDING QUESTIONS.....	7
206. TO 299. RESERVED.....	7

CHAPTER 3 REHABILITATION ACT OF 1973, AS AMENDED

300. BACKGROUND INFORMATION.....	9
301. COVERAGE.....	9
302. APPLICABILITY TO OTHER ENTITIES.....	11
303. COMPLIANCE, ENFORCEMENT, AND REMEDIES.....	11
304. IDENTIFICATION OF CONFLICTS AND RESOLUTIONS, OUTSTANDING QUESTIONS.....	12
305. TO 399. RESERVED.....	15

CHAPTER 4. THE AIR CARRIER ACCESS ACT OF 1986

400. BACKGROUND INFORMATION.....	17
401. COVERAGE.....	17
402. APPLICABILITY AND RESPONSIBILITY.....	17
403. REQUIREMENTS FOR AIRPORT OWNERS AND OPERATORS AND AIR CARRIERS IN TERMINALS, PARKING, AND GROUND TRANSPORTATION.....	17
404. EXCEPTIONS TO REQUIREMENTS; WAIVERS.....	18
405. COMPLIANCE, ENFORCEMENT, AND REMEDIES.....	19
406. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.....	19
407. TO 499. RESERVED.....	22

CHAPTER 5. AMERICANS WITH DISABILITIES ACT OF 1990

500. BACKGROUND INFORMATION.....	23
501. APPLICABILITY (GENERAL) TO AIRPORTS.....	23
502. TO 599. RESERVED.....	24

CHAPTER 6. TITLE I, EQUAL EMPLOYMENT OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES, THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS

600. BACKGROUND INFORMATION.....	25
601. APPLICABILITY.....	25
602. EMPLOYMENT PRACTICES.....	26
603. ESSENTIAL FUNCTIONS OF A JOB.....	26
604. REASONABLE ACCOMMODATION.....	26

605. MEDICAL EXAMINATIONS; PREEMPLOYMENT QUESTIONS.	26
606. PRE-EMPLOYMENT INQUIRIES REQUIRED BY LAW OR REGULATION.	26
607. EXCEPTIONS.....	26
608. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.	27
609. COMPLIANCE, ENFORCEMENT AND REMEDIES.....	28
610. TO 699. RESERVED.....	28

**CHAPTER 7. TITLE II, SUBTITLE A, NONDISCRIMINATION ON THE BASIS OF
DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES, THE AMERICANS
WITH DISABILITIES ACT SPECIFIC PROVISIONS**

700. BACKGROUND INFORMATION.	29
701. COVERAGE.	29
702. APPLICABILITY.	29
703. EMPLOYMENT.	30
704. PROGRAM ACCESSIBILITY.....	30
705. EXCEPTIONS.....	32
706. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.	32
707. ADMINISTRATIVE REQUIREMENTS.	34
708. COMPLIANCE, ENFORCEMENT, AND REMEDIES.....	34
709. TO 799. RESERVED.....	36

**CHAPTER 8. SUBTITLE B OF TITLE II, TRANSPORTATION PROVIDED BY PUBLIC
ENTITIES, AND TITLE III, TRANSPORTATION PROVIDED BY PRIVATE ENTITIES,
THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS**

800. BACKGROUND INFORMATION.	37
801. COVERAGE.	37
802. KEY TRANSPORTATION DEFINITIONS.	37
803. GENERAL APPLICABILITY.	39
804. AIRPORT TRANSPORTATION SYSTEMS.	40
805. DISCRIMINATION PROHIBITED.....	41
806. COMPLIANCE, ENFORCEMENT, AND REMEDIES.....	41
807. EXCEPTIONS; WAIVERS.	42
808. THE ACQUISITION OF ACCESSIBLE VEHICLES AND THE PROVISION OF SERVICE.....	42
809. PROVISION OF SERVICE.....	43
810. OTHER FORMS OF TRANSPORTATION NOT COVERED.....	45
811. APPENDIX A TO 49 CFR PART 37 - STANDARDS FOR ACCESSIBLE TRANSPORTATION FACILITIES.....	45
812. "AMERICANS WITH DISABILITIES ACT ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES," 49 CFR PART 38.	48
813. TO 899. RESERVED.....	50

**CHAPTER 9 TITLE III, NONDISCRIMINATION ON THE BASIS OF DISABILITY BY
PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES
(NONTRANSPORTATION), AMERICANS WITH DISABILITIES ACT**

900. BACKGROUND INFORMATION.	51
901. COVERAGE.	51
902. KEY DEFINITIONS.....	51
903. GENERAL APPLICABILITY.	53
904. EXEMPTIONS.....	54
905. INDIVIDUAL WITH DISABILITIES.....	55

906. GENERAL REQUIREMENTS.....	55
907. SPECIFIC REQUIREMENTS.	56
908. NEW CONSTRUCTION.	57
909. ALTERATIONS.....	57
910. COMPLIANCE, ENFORCEMENT, AND REMEDIES.....	57
911. TECHNICAL ASSISTANCE.....	58
912. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.....	58
913. CERTIFICATION.	59
914. TO 999. RESERVED.	59

CHAPTER 10. TITLE V, MISCELLANEOUS PROVISIONS

1000. BACKGROUND INFORMATION.....	61
1001. COVERAGE.	61
1002. COMPLIANCE, ENFORCEMENT, REMEDIES.....	62
1003. TO 1199. RESERVED.....	62

CHAPTER 1.

INTRODUCTION

1. BASIS.

This AC implements the objective set forth in the ADA to provide technical assistance to assist entities and persons affected by its requirements to understand the law and its implementing regulations. This AC has been broadened to provide technical assistance on the Architectural Barriers Act, the Rehabilitation Act of 1973, as amended, and the Air Carriers Access Act of 1990, since these also impact upon the entities and persons subject to or covered by the ADA.

This AC includes complete legal citations, the effective dates of regulations, and compliance dates to assist the reader in differentiating between the requirements of the applicable statutes and regulations.

2. TO 199. RESERVED.

CHAPTER 2.

ARCHITECTURAL BARRIERS ACT OF 1968, AS AMENDED

200. BACKGROUND INFORMATION.

a. Act. Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 et seq.)

b. Lead Agency. DOJ, Executive Order 12250, Nov. 12, 1980, 45 FR 72995.

c. Compliance Agency. ATBCB, established under Section 502 of the RA, 29 U.S.C. 792.

d. Standard Setting Agencies. GSA, HUD, USPS, and DOD.

e. Standards:

(1) **ANSI.** Utilized by the by the four standard setting agencies from September 2, 1969 to October 13, 1980;

(2) **Individual Standards.** Set by each of the four standard setting agencies under their individual statutory authority; utilized between October 14, 1980 to July 31, 1984;

(3) **UFAS.** Four standard setting agencies and the DOJ developed the UFAS, published originally on August 7, 1984, 49 FR 31528, to minimize the differences in the standards previously issued by the four standard setting agencies.

201. COVERAGE.

Structural accessibility is required for persons with disabilities in buildings or facilities that are:

a. to be constructed or altered by or on behalf of the United States;

b. to be leased in whole or in part by the United States after August 12, 1968;

c. to be financed in whole or in part by a grant or a loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction, or alteration issued under authority of the law authorizing such grant or loan; or

d. to be constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulatory Compact.

202. GENERAL APPLICABILITY AND RESPONSIBILITY.

On any given airport, it is conceivable that more than one of the four standard setting agencies could have jurisdiction - the GSA over airport facilities built with Federal financial assistance, usually from the DOT; the USPS over a postal facility, and the DOD if military operations are present. In such cases, guidance must be obtained from the appropriate standard setting agency. Recipients are responsible for compliance with the ABA , the UFAS, and any other applicable GSA regulations. In the event the recipient leases portions of the Federally-assisted building to other public or private entities, the responsibility would remain with the recipient. The recipient, however, could ensure compliance on the part of the lessees through requirements included in the lease document or other agreement executed.

203. EXCEPTIONS TO COMPLIANCE REQUIREMENTS.

Under UFAS, the following exceptions, waivers, and modifications of standards are available. (Section numbers in Paragraph 203.a. and b. of this AC relate to 41 CFR Chap. 101, the GSA regulation implementing UFAS).

a. Exceptions. Section 101-19.604 of 41 CFR Chap. 101 provides that the GSA's accessibility standards shall not apply to:

(1) The design, construction, alteration, or lease of any portion of a building which need not, because of its intended use, be made accessible to, or usable by, the public or by physically handicapped persons;

(2) The alteration of an existing building if the alteration does not involve the installation of, or work on, existing stairs, doors, elevators, toilets, entrances, drinking fountains, floors, telephone locations, curbs, parking areas, or any other facilities susceptible of installation or improvements to accommodate the physically handicapped;

(3) The alteration of an existing building, or of portions thereof, to which application of the standards is not structurally possible;

(4) The construction or alteration of a building for which plans and specifications were completed or substantially completed on or before September 2, 1969: provided, however, that any building defined in Section 101-19.602(a)(4) [Constructed under authority of the National Capital Transportation Act of 1960, the National Capital Transportation Act of 1965, or Title III of the Washington Metropolitan Area Transit Regulation Compact] shall be designed, constructed, or altered in accordance with the standards prescribed in Section 101-19.603 regardless of design status or bid solicitation as of September 2, 1969; and

(5) The leasing of space when it is found after receiving bids or offers and otherwise legally acceptable that a proposal meets most of the requirements of the UFAS Standards. If no offeror or bidder meets all the requirements, then preference must be given to the offeror or bidder who most nearly meets the standards in Section 101-19.603. If the award is proposed for a firm other than the one that most nearly meets the UFAS and whose bid or offer is reasonable in price and is otherwise legally acceptable, a waiver or modification of the standards must be obtained.

b. Waiver or Modification of Standards. Section 101-19.605 provides: the applicability of the standards set forth in this subpart may be modified or waived on a case-by-case basis upon application to GSA by the head of the department, agency, or instrumentality of the United States concerned only if the Administrator of the General Services determines that such waiver or modification is clearly necessary.

c. Other UFAS Exceptions: Accessibility is not mandatory or can be modified, as specified, when any of the following exists. (Paragraph numbers in Paragraph 203.c. of this AC relate to the UFAS, issued jointly by the GSA, DOD, HUD, and USPS, published originally in 49 FR 31528, August 7, 1984, codified at 36 CFR Part 1190. See the cited paragraphs for complete information on the requirements).

(1) **Structural Impracticability.** Concerns changes having little likelihood of being accomplished without removing or altering a load-bearing structural member and/or incurring an increased cost of 50 percent or more of the value of the element of the building or facility involved. Paragraph 3.5, Definitions.

(2) **Temporary Use.** Applies to facilities that are not of permanent construction but are extensively used or essential for public use for a given (short) period of time, for example, temporary classrooms or classroom buildings at schools and colleges, or facilities around a major construction site to make passage accessible, usable, and safe for everybody. Structures directly associated with the actual processes of major construction, such as porto potties, scaffolding, bridging, trailers, and the like, are not included. "Temporary" as applied to elements means installed for less than 6 months and not required for safety reasons. Paragraph 3.5, Definitions.

(3) **Acceptable Distribution of Parking Spaces.** The total number of required accessible parking spaces may be distributed among parking lots, if greater accessibility can be achieved. (See paragraph 4., Accessible Element and Spaces: Scope and Technical Requirements.)

(4) **Non-Passenger Elements of Elevators.** Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks are excepted. Accessible ramps complying with Paragraph 4.8, or, if no other alternative is feasible, accessible platform lifts, complying with Paragraph 4.11 may be used in lieu of an elevator.

(5) **Lack of At-grade Egress or Doors.** In multiple-story buildings and facilities where at-grade egress from each floor is impossible, either of the following is permitted: the provision within each story of approved fire and smoke partitions that create horizontal exits, or, the provision within each floor of areas of refuge approved by agencies having authority for safety.

(6) **Temporary Use of Rooms or Space - Signage.** The signage provisions of Paragraph 4.30.4 of UFAS are not mandatory for temporary information on room and space signage, such as the current occupant's name, provided the permanent room or space identification complies with Paragraph 4.30.4.

(7) **Unavailability of "Dial Tone First" Telephones.** For exterior installations only, if dial tone first service is not available, then a side reach telephone may be installed instead of the required forward reach telephone (i.e., one telephone in proximity to each bank shall comply with Paragraph 4.31. of UFAS).

(8) **Excessive Costs for Alterations to Accessible Buildings.** If the cost of altering existing elements, spaces, essential features, or common areas; or of installing new power-driven vertical access, new stairs, or other vertical access equipment; or of altering an entire space due to alterations of single elements (Paragraph 4.1.6(a) (b) and (c)) exceeds 15 percent of the total cost of all other alterations, then a schedule may be established by the standard-setting and/or funding agency to provide the required improvements within a 5-year period.

204. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Practice and Procedure for Compliance Hearings. The ATBCB's practice and procedure rule is set forth in 36 CFR Ch. XI, Part 1150. Copies may be obtained from the ATBCB, 1111 18th Street, NW, Suite 501, Washington, DC 20036-3894. This paragraph, therefore, is limited to the provision of information needed prior to the filing of a complaint and to information on remedies.

b. Policy of Amicable Resolution. It is the policy of the ATBCB to encourage voluntary and informal resolution at any stage of the proceedings. Agreements to settle amicably shall be submitted to the Executive Director or to the Administration Law Judge (Judge) and shall be accompanied by an appropriate proposed order. The Executive Director is authorized to resolve any proceeding on behalf of the ATBCB unless otherwise directed by the ATBCB and may file appropriate stipulations or notice that the proceeding is discontinued.

c. Key Definitions.

(1) **"Agency"** means Federal department, agency, or instrumentality as defined in sections 551(1) and 701(b)(1) of Title 5 U.S.C., or an agency official authorized to represent the agency. It includes any executive department or independent establishment in the Executive Branch of the government, including wholly owned government corporations, and any establishment in the legislative or judicial branch of the government, except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his or her direction.

(2) **"Alteration"** means any change in a building or facility or its permanent fixtures or equipment. It includes, but is not limited to, remodeling, renovation, rehabilitation, reconstruction, changes or rearrangement in structural parts, and extraordinary repairs. It does not include normal maintenance, reroofing, interior decoration, or changes to mechanical systems.

(3) **"Building or Facility"** means all or any portion of buildings, structures, equipment, roads, walks, parking lots, parks, sites, or other real property or interest in such property.

(4) **"Complaint"** means any written notice of an alleged violation, whether from an individual or organization, or other written information reasonably indicating to the Executive Director of the ATBCB a violation of the ATBCB standard.

(5) **"Construction"** means any section of a new building or an additional to an existing building.

(6) **"Extraordinary Repair"** means the replacement or renewal of any element of an existing building or facility for purposes other than normal maintenance.

(7) **"PER"** means "Provisional Expedited Relief," provided when it would be consistent with preserving the rights of all parties; when the Executive Director is likely to succeed on the merits of the proceedings; when it is in the public interest; and when the threatened injury or harm to the complainant outweighs that to the respondent.

d. Scope and Interpretation of Rules. 36 CFR Part 1150 governs all compliance proceedings held before a Judge appointed by the ATBCB and all alleged violations coming to the Executive Director as a complaint. In the absence of specific provisions in the rule, the procedure shall be in accord with the Administrative Procedure Act, Subchapter II of Chapter 5 and Chapter 7, of Title 5 U.S.C., and the Federal Rules of Civil Procedure in that order. The rules and regulations shall be liberally construed. The Judge may modify or waive any rule in these regulations, upon determination that no party will be unduly prejudiced and that justice will be served.

e. Parties. The term "parties" includes (1) any agency, state, or local body, or other person named as a respondent in a notice of hearing or opportunity for hearing; (2) the Executive Director of the ATBCB, and (3) any person named as a party by order of the Judge. A complainant is not a party to the proceedings, but may petition the Judge to participate under Section 1150.13 of 36 CFR Part 1150. Other persons also may petition to participate when they claim an interest in the proceedings and may contribute materially to their proper disposition. The Judge may determine the extent of participation of petitioners, including as an intervening party or as a participant.

f. Filing Complaints. Complaints must be in writing and addressed to: Executive Director, Architectural and Transportation Barriers Compliance Board, 1111 18th Street, Suite 501, Washington, DC 20036-3894. Complaint forms are available at that address. The complaint may, but need not, contain (1) the complainant's name and location; (2) the facility or building, and, if known, the funding agency, and (3) a brief description of the barriers in the facility or building.

g. Confidentiality. The ATBCB holds in confidence the identity of all persons submitting complaints unless the person submits a written authorization otherwise.

h. Technical Rules on the Form, Execution, Service, and Filing of Documents; Time Computations; Proceedings Prior to Hearings; Pleadings and Motions; Hearings; Discovery; Post-Hearing Procedures; and Miscellaneous Matters. Since these are covered in detail in 36 CFR Part 1150, they are not addressed in this AC.

i. Remedies. The Judge issues a decision within 30 days after the hearing ends, or, when the parties submit posthearing briefs, within 30 days after the filing of the briefs. The decision may direct the parties to take specific action or may order the suspension or withholding of Federal funds.

j. Post-Order Proceedings. Any party adversely affected by a compliance order issued by a Judge may make a motion to the Judge to have such order vacated upon a showing that the building or facility complies with the order.

k. Judicial Review. Any complainant or participant in a proceedings may obtain judicial review of a final order issued in a compliance proceeding.

l. Court Enforcement. The Executive Director, at the direction of the Board, shall bring a civil action in any appropriate United States District Court to enforce in whole, or in part, any final compliance order

205. IDENTIFICATION OF CONFLICTS AND RESOLUTIONS, OUTSTANDING QUESTIONS.

a. Standards. As discussed further under the RA and the ADA in this AC, recipients of Federal financial assistance at this point must comply with the UFAS when the assistance makes them subject to the ABA; with either UFAS or ADAAG, in some circumstances, when the assistance makes them subject to Section 504 of the RA; and with the original ADAAG standards published by the ATBCB and adopted by the DOT in Appendix A to its rule in 49 CFR Part 37 (implementing the transportation and related requirements in Titles II and III of the ADA). The ATBCB, the DOT, and the DOJ now have proposed to adopt ADAAG, as amended, for all purposes. The DOT comment period closed August 14, 1994, but there is as yet no resolution (See paragraph 3.a.(2)(i)).

b. Exceptions, Waivers. Existing and resolved conflicts between the UFAS and ADAAG in regard to exceptions and waivers are discussed further herein under the ADA.

206. TO 299. RESERVED.

CHAPTER 3

REHABILITATION ACT OF 1973, AS AMENDED

300. BACKGROUND INFORMATION.

- a. **Act.** Section 504 of the Rehabilitation Act, as amended (29 U.S.C. 794).
- b. **Lead Agency.** DOJ, 28 CFR Part 41 (redesignated and amended at 46 FR 40686, August 11, 1981).
- c. **Compliance Agencies.** DOT, DOJ, 49 CFR 27.125.
- d. **Standard.** UFAS and/or ADAAG.

301. COVERAGE.

The following requirements applied prior to enactment of the ADA and amendment of 49 CFR Part 27 through the addition of section 27.19, 56 FR 40763, Sept. 6, 1991; amendment of sections 27.3 and 27.5, 56 FR 45621; and redesignation of sections 27.71; 27.75; and 27.121; and prior to enactment of the ACAA and issuance of an implementing regulation in 14 CFR Part 382, as amended. These modify the requirements to make them consistent with the ACAA and the ADA (See Chapter 4 on the ACAA and Chapters 5 through 9 on the ADA).

- a. **Programs.** Nondiscrimination by the airport owner or operator in the provision of access to programs operated with or benefiting from Federal financial assistance;
- b. **Employment.** Nondiscrimination by the airport owner or operator in the employment of persons with disabilities;
- c. **Compliance planning.** Designation of a liaison within 90 days of May 31, 1979; evaluation of policies and practices within 180 days of May 31, 1979; adoption of a complaint procedure by recipients employing 15 or more persons; notice to participants, beneficiaries, applicants and employees within 90 days of May 31, 1979; and inclusion of a statement of nondiscrimination policy in any general information or recruitment publications made available to participants, beneficiaries, applicants, or employees; and
- d. **Responsibility.** Unlike some civil rights regulations, Part 27 requires assurances of nondiscrimination only from the recipient and does not call for inclusion of an assurance requirement in agreements such as contracts and leases executed by the recipient. The DOT, however, consistently has interpreted Part 27 to require nondiscrimination by the other parties to these agreements and to require action by the recipient in the event of noncompliance by tenants, contractors, or similar parties.
- e. **Accessibility.**

(1) **New Construction.** Adherence to UFAS, 41 CFR Part 101-19, Subpart 101-19.6, appendix A; to requirements in 49 CFR 27.71(a)(1), Fixed Facilities; new terminals, and to additional standards in 49 CFR 27.71(a)(2), as follows:

- (i) **Accessible Airport Terminal Circulation and Flow.**
- (ii) **Display of the International Accessibility Symbol.**
- (iii) **Ticketing Accessibility.**

(vi) Baggage Check-in and Retrieval Accessibility.

(v) Boarding. Boarding must be through level entry platforms and passenger lounges (the preferred methods) or through lifts, ramps, or other suitable devices, not normally used for movement of freight.

(vi) Telephones. Telephones must have volume control or sound booster devices, and there must be one marked telephone per telephone bank.

(vii) Teletypewriters. There must be a sufficient number to permit communication with ticket agents and other personnel.

(viii) Vehicular Loading and Unloading. There must be spaces for individuals with disabilities, adjacent to terminal entrances and on level surfaces.

(ix) Parking. Parking must include (1) curb-cuts or ramps at cross-walks between parking areas and terminals; (2) parking spaces in multi-level parking facilities, on level nearest ticketing and boarding areas of the terminal; and (3) provision of elevators, ramps, or other devices to accommodate persons in wheel chairs using multi-level facilities.

(x) Accessible Waiting Areas/Public Areas.

(xi) Provision of Terminal Information Orally and Visually.

(xii) Provision of Accessible Public Facilities Such as Drinking Fountains, Toilets, Travelers and First Aid.

(2) Fixed facilities; existing terminals.

(i) Structural Changes. These must be made in accordance with ANSI standards as soon as practicable but not later than 3 years after May 31, 1979.

(ii) Ongoing Renovation. There must be immediate incorporation of accessibility standards in structural changes involving entrances, exits, interior doors, elevators, stairs, baggage areas, drinking fountains, toilets, telephone, eating places, curbs, and parking areas.

(iii) Transition Plans. Plans were to be submitted to the FAA Office of Airports Standards, where extensive structural changes were necessary to achieve accessibility.

(iv) General Applicability. Requirements apply to recipients, defined as any State, territory, possession, the District of Columbia, or Puerto Rico, or any political subdivision thereof, or instrumentality, institution, organization, or other entity, or any individual in any State, territory, possession, the District of Columbia or Puerto Rico, to whom Federal financial assistance from the DOT is extended directly or through another recipient, for any Federal program, including any successor, assignee, or transferee thereof, but such term does not include any ultimate beneficiary under such program (on airports, basically the public utilizing the airport).

(v) Applicability of Specific Requirements to Airports.

(A) New Terminals. All airports must follow UFAS plus the special requirements in 49 CFR 27.71(a)(1) and (2).

(B) Specific Additional Requirements for Air Carrier Airports. These are defined as airports serviced by a certificated air carrier unless such airport is served solely by an air carrier which provides: (1) Passenger service at that airport in aircraft having a maximum passenger capacity of less than 56 passengers, or (2) cargo service in air transportation at that airport solely with aircraft having a maximum payload

capacity of less than 18,000 pounds; provided, however, that if at any such airport, Federal funds are made available for terminal facilities, it shall be deemed to be an air carrier airport. The specific additional requirements are:

(1) Lifts, Ramps, or Other Suitable Devices. Lifts, ramps, or other suitable devices not normally used for the movement of freight, must be available within 3 years of May 31, 1979, if the terminals at such airports are not equipped with jetways or passenger lounges for boarding and unboarding.

(2) Passenger Services. Provisions for assisting passengers with disabilities upon request in movement into, out of, and within the terminal, and in the use of terminal facilities, including baggage handling.

(C) All Recipient Airports. All recipient airports must provide access to terminals and facilities for seeing eye and hearing guide dogs (The DOT's incorporation of the ADA requirements has broadened this to include all service animals).

302. APPLICABILITY TO OTHER ENTITIES.

See Identification of Conflicts and Resolutions, Outstanding Questions, Paragraph 304.

303. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Compliance Information. All recipients shall keep on file for 1 year all complaints of noncompliance; a record in summary form of such complaints for 5 years; and shall provide reports at the times and in the form prescribed by the responsible DOT official (RDO). It shall make information available during normal business hours to the RDO, and shall make known to participants, beneficiaries, and other interested persons the provisions of 49 CFR Part 27.

b. Complaints and Investigations. Any person alleging noncompliance may file a complaint with the RDO, not later than 180 days from the date of the alleged discrimination, unless the RDO has extended the time for good cause shown. The RDO or designee investigates promptly if a complaint, compliance review, report or other information indicates a possible noncompliance.

c. Informal Resolution. If the results of the investigation point toward noncompliance, the RDO shall inform the recipient and may attempt informal resolution. If the investigation does not appear to support the complaint, the RDO shall so inform the complainant.

d. Intimidation and Retaliation. The identity of the complainant shall be kept confidential at the complainant's election during the investigation. If such confidentiality hinders the conduct of the investigation, however, the RDO may advise the complainant to waive that privilege. No employee or a contractor of a recipient shall intimidate, threaten, coerce, or discriminate against any individual asserting his or her rights and privileges under Section 504 of the RA or under 49 CFR Part 27.

e. Remedies. If there is reasonable cause to believe that noncompliance has occurred, the RDO may recommend suspension or termination of, or refusal to grant or to continue Federal financial assistance, or take any other steps authorized by law, including but not limited to:

(1) Referral to the DOJ. The RDO may recommend that appropriate proceedings be brought to enforce any rights of the United States under Federal or State law (including other titles of the RA) or any assurance or other contractual agreement.

(2) Instituting Any Applicable Proceeding under State or Local Law.

f. Rights of the Recipient.

(1) Sanctions. No order suspending, terminating, or refusing to grant or to continue Federal financial assistance shall become effective until there has been:

(i) Notification to the recipient.

(ii) Determination that informal resolution is not possible.

(iii) An express finding on the record, after opportunity for a hearing, that noncompliance has occurred.

(2) Limitation on Sanction. Any sanction is limited to the particular recipient that has failed to comply and is limited to the particular program or part thereof in which noncompliance has been found.

(3) Institution of Other Means Authorized by Law. No such means may be instituted until there has been:

(i) Notification to the recipient.

(ii) The expiration of at least 10 days from the mailing of the notice, during which informal resolution has been pursued.

(4) Hearings. Whenever an opportunity for a hearing is required under 49 CFR Part 27, the recipient is entitled to notice by registered or certified mail, return receipt requested; to a hearing date not less than 20 days after the date of such notice; and notification of the actual date. The recipient is entitled to consideration of a hearing location other than Washington, D.C., to representation by counsel, and to written findings, setting forth the proposed decision by an Administrative Law Judge, based on the hearing record. The recipient also is entitled to waive a hearing, and to elect, instead, to submit written information and argument for the record.

(5) Final Decisions. Final decisions are made by the Secretary of Transportation on the certified record.

(6) Restoration to Full Eligibility. Following satisfaction of the terms and conditions of an adverse decision, the recipient is restored to full eligibility for Federal financial assistance. A request for restored eligibility, supported by evidence of compliance, may be made to the RDO at any time. If the request is denied, the recipient may request a prompt hearing. While proceedings are pending, the sanctions imposed by the order remain in effect.

304. IDENTIFICATION OF CONFLICTS AND RESOLUTIONS, OUTSTANDING QUESTIONS.

a. Applicability. As originally interpreted, the specific requirements of the RA applied only to recipients. Lessees, contractors, and other organizations on an airport were considered to have only a general non-discrimination obligation. Since then, the following documents have been issued or actions taken:

(1) DOT NPRM, "Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs," 49 CFR Part 27, 55 FR 8081, March 6, 1990. In the NPRM, the DOT inquired as to whether the accessibility requirements proposed for airport operators and owners, regarding "terminal facilities and services, including parking and ground transportation facilities," should apply to services and facilities provided by contractors or concessionaires on the airport. It also inquired as to whether distinctions should be made between requirements relating to facilities and those relating to transportation.

(2) DOT Final Rule, "Nondiscrimination on the Basis of Handicap in Air Travel," 14 CFR Part 382, 55 FR 8008, March 6, 1990. In effect, the ACAA rule was a first step toward expansion of accessibility requirements to lessees. It imposes accessibility requirements, fairly similar to those found in 49 CFR Part 27, the DOT RA regulation, upon air carriers that lease or own and operate terminals on public airports.

(3) **The ADA, Title II, Subpart B, "Transportation Provided by Public Entities," and Title III, "Places of Public Accommodation Provided by Private Entities," implemented in the DOJ regulations, 28 CFR Part 35, 56 FR 35693, July 26, 1991; in 28 CFR Part 36, 56 FR 35543, July 26, 1991; and in the DOT regulation implementing the transportation requirements of Title III, 49 CFR Part 37, "Transportation Services for Individuals with Disabilities," 56 FR 45621, September 6, 1991.** These resolved the question of coverage of entities other than the airport operator and owner receiving Federal financial assistance. The ADA requirements cover virtually every entity found on an airport - the concessions, airport buses, hotels, motels, rental car agencies, charter buses, shopping malls, private jitneys or shuttle services, and others. See ADA discussion, further herein. The non-transportation requirements of Title II also are set forth in 28 CFR Part 36 by the DOJ.

(4) **Amendment of 49 CFR Part 27.** In a Final Rule, published at 56 FR 45621, September 6, 1991, to conform the RA and the ADA regulations, the DOT amended Section 27.3 of 49 CFR Part 27, the RA regulation, as follows:

"(b) Design, construction, or alteration of buildings or other fixed facilities by public entities subject to part 37 shall be in conformance with appendix A to part 37 of this title. All other entities subject to section 504 shall design, construct or alter a building, or other fixed facilities shall (sic) [to] be in conformance with either appendix A to part 37 of this title or the Uniform Federal Accessibility Standards, 41 CFR part 101-19, subpart 101-19.6, appendix A.I."

(5) **Amendment of 49 CFR Part 27.** In a Final Rule, published at 56 FR 45621, September 6, 1991, to conform the RA and the ADA regulations, the DOT amended Section 27.19 of 49 CFR Part 27, the RA regulation, as follows:

"(a) Recipients subject to this part (whether public or private entities as defined in 49 CFR part 37) shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101-12213) including the Department's ADA regulations (49 CFR parts 37 and 38), the regulations of the Department of Justice implementing Titles II and III of the ADA (28 CFR parts 35 and 36), and the regulations of the Equal Employment Opportunity Commission (EEOC), implementing title I of the ADA (29 CFR part 1630). Compliance with the EEOC title I regulations is required as a condition of compliance with section 504 for DOT recipients even for organizations which, because they have fewer than 25 or 15 employees, would not be subject to the EEOC regulation in its own right. Compliance with all these regulations is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart F of this part."

b. Responsibility: The ADA and the ACAA, in effectively broadening the applicability of the accessibility and nondiscrimination requirements, either through statutory provisions or through regulatory action, affected the responsibilities of entities on airports. Under 49 CFR 37.11 of the DOT ADA rule, enforcement is as follows:

(1) **Recipients of Federal Financial Assistance from the DOT.** Recipients are subject to administrative enforcement of 49 CFR Part 37 under the provisions of 49 CFR Part 27, subpart F (the RA regulation).

(2) **Public Entities.** Public entities, whether or not they receive Federal financial assistance, also are subject to enforcement action as provided by the DOJ in its regulation, implementing Subparts A and B of Title II of the ADA, in 28 CFR Part 35.

(3) **Private Entities.** Private entities, whether or not they receive Federal financial assistance, are subject to the regulations of the DOJ, implementing Title III of the ADA in 28 CFR Part 36.

c. Standards.

(1) Accessibility. At the time the ADA was enacted, the UFAS were the standards in use under the RA regulation. The DOJ, DOT, and the ATBCB then adopted ADAAG as the standards for the ADA, but established dual standards - the UFAS and the ADAAG, for recipients of Federal financial assistance under Section 504 of the RA. The ATBCB has proposed adopting ADAAG for the ABA and has proposed that the four major standard setters under the ABA (GSA, HUD, USPS, and DOD) do likewise. At this point, there is no active movement on the part of these standard setters to do so. The ATBCB also has proposed that the DOJ, DOT, and the ATBCB adopt the ADAAG, as amended, for the RA. As discussed earlier herein, this now is under consideration. If the amended ADAAG becomes the single set of standards, the DOT also will use them to replace Appendix A of 49 CFR Part 37, since Appendix A contains the original version of the ADAAG. At present, under Section 27.3 of 49 CFR Part 27, the RA regulation, airports that have received Federal financial assistance from the DOT are given the option of using the UFAS or the ADAAG, as set forth in Appendix A of 49 Part 37, provided that in instances where the two conflict, the recipient must select the most comprehensive standards. Once a standard is selected, it must be used throughout the project.

In 49 CFR Part 38, the DOT has established minimum guidelines or standards for the transportation vehicles required to be accessible under the ADA and the DOT rule, 49 CFR Part 37. Airport owners and operators are directed particularly to Subpart A - "General Requirements;" Subpart B - "Buses, Vans, and Systems;" Subpart G - "Over-the-Road Buses and Systems;" and Subpart H - "Other Vehicles and Systems" (covering Automated Guideway Transit or "people movers," trams, monorails, and similar forms of transportation).

(2) Employment. See Paragraph 608.c. of this AC for relationship between employment requirements of Title I of the ADA and Section 504 of the RA.

d. Definitions. The status of the term "air carrier airport," which is defined differently in the RA and the ACAA regulations, is as follows:

(1) Definition in RA Regulation, 49 CFR 27.5. "Air Carrier Airport means an airport serviced by a certificated air carrier unless such airport is served solely by an air carrier which provides: (1) Passenger service at that airport in aircraft having a maximum passenger capacity of less than 56 passengers, or (2) cargo service in air transportation at that airport solely with aircraft having a maximum payload capacity of less than 18,000 pounds; provided, however, that if at any such airport, Federal funds are made available for terminal facilities, it shall be deemed to be an air carrier airport."

(2) Definition in ACAA Regulation, 14 CFR 382.5. "Air Carrier Airport means a public, commercial service airport which enplanes annually 2,500 or more passengers and receives scheduled air service."

(3) DOT NPRM, "Nondiscrimination on the Basis of Handicap in Federally-Assisted Programs, 49 CFR Part 27, 55 FR 8081, March 6, 1990. In this NPRM, the DOT proposed to change the "air carrier airport" definition in Part 27 to conform to the 2,500 or more passenger enplanement definition in Part 282. This change, however, has not been made to date.

(4) Temporary Resolution of Definition Conflict. As a general rule, it is necessary to attempt to harmonize conflicting statutes or regulations, if at all possible. Although "air carrier airport" is defined in the ACAA regulation, the term appears only once in the sections dealing with requirements. In 14 CFR 382.23(a) the DOT states: "This section applies to terminal facilities owned, leased, or operated on any other basis by an air carrier at an air carrier airport, including parking and ground transportation facilities." In 14 CFR 382.23(c), it states: All facilities designed, constructed, or altered after the effective date of this part shall be accessible to handicapped persons. Compliance with the requirements of the UFAS, or a substantially equivalent standard, shall be deemed compliance with this requirement. These facilities shall also provide the following additional features" [enumerated thereafter]. 14 CFR 382.23(e) provides: "Contracts or leases between carriers and airport operators concerning use of airport facilities shall set forth the respective responsibilities of the parties for compliance with accessibility requirements under this section and 49 CFR 27.71."

It is clear that the DOT intended a connection between the ACAA and RA regulations, similar to that which later came into being between the ADA and the RA. Further, in 49 CFR 382(e), it recognizes that the unique relationships between

air carriers and airports may call for different allocations of responsibilities at different airports. The relative bargaining power of the parties plays a role in the responsibilities to which each party will agree. For example, the ticketing, waiting, and baggage handling areas in an airport may be under the control of the airlines. In others, the airport may exercise its

own control. At others, enplanement may be deemed the sole responsibility of the airlines. Some airports, however, may consider a portion of this to be their responsibility. The two regulations walk hand in hand.

In view of this, the FAA advises recipients to look to both definitions and, for purposes of compliance, to select the most comprehensive of the two. That is, if a recipient would qualify as an "air carrier airport" under the RA definition, but not under the ACAA definition, it would look to the RA definition for its status. Similarly, if the recipients would qualify as an "air carrier airport" under the ACAA, but not under the RA, it would look to the ACAA definition for its status.

305. TO 399. RESERVED

CHAPTER 4.

THE AIR CARRIER ACCESS ACT OF 1986

400. BACKGROUND INFORMATION.

a. Act. Air Carrier Access Act of 1986 (49 U.S.C. 1374(c))

b. Lead Agency. DOT.

c. Compliance Agency. DOT, Office of the General Counsel, Assistant General Counsel for Aviation Enforcement and Proceedings, C-70, ATTN: Consumer Protection Division, C-75), 400 - 7th Street, SW, Washington, DC 20590, 202/366-9342.

d. Standards. UFAS and other specific requirements set forth in 14 CFR Part 382.

401. COVERAGE.

a. Discrimination on the Basis of Disability within Aircraft. Prohibits discrimination by U. S. air carriers on the basis of disability, within the aircraft, consistent with the safe carriage of all passengers. Includes general and administrative provisions concerning physical facilities and services to be provided to passengers with disabilities. (Note: Since this AC deals with the responsibilities of airport owners and operators and not with those of the airlines, regarding accessibility within the aircraft, the latter requirements are not set forth herein. For airline responsibilities, see: 14 CFR Part 382, originally published in 55 FR 8008, March 6, 1990.)

b. Discrimination on the Basis of Disability within Terminals. Prohibits discrimination within terminal facilities owned, leased, or operated on any other basis by an air carrier at an air carrier airport, including parking and ground transportation facilities.

402. APPLICABILITY AND RESPONSIBILITY.

a. United States Air Carriers. Applies to all U. S. air carriers providing air transportation.

b. United States Air Carriers and Airport Owners and Operators. Applies to U. S. Air Carriers and airport owners and operators of air carrier airports for the provision of terminal, parking, and ground transportation accessibility, in accordance with respective responsibilities specified in the contracts or leases between the air carriers and airport owners or operators, as required by section 382.23 of 14 CFR Part 382, DOT regulation to implement the ACAA.

403. REQUIREMENTS FOR AIRPORT OWNERS AND OPERATORS AND AIR CARRIERS IN TERMINALS, PARKING, AND GROUND TRANSPORTATION.

a. Facilities and Services. Facilities and services, which, when viewed as a whole, must be accessible to and usable by handicapped individuals.

b. Design, Construction, and Alterations. There must be compliance with the UFAS, or a substantially equivalent standard, in all facilities designed, constructed, or altered after April 5, 1990, the effective date of 14 CFR Part 382. The facilities shall provide the following additional accessibility features:

(1) Terminal Design. The basic terminal design shall permit efficient entrance and movement of individuals with disabilities while at the same time giving consideration to their convenience, comfort, and safety. The design, especially concerning the location of means of vertical access, shall minimize any extra distance that wheelchair

users must travel, compared to other persons, to reach ticket counters, waiting areas, baggage handling areas, and boarding locations.

(2) Ticketing Systems. The ticketing systems shall provide individuals with disabilities the opportunity to use the primary fare collection area to obtain a ticket and pay the fare.

(3) Baggage Handling. Outbound and inbound baggage facilities shall allow efficient baggage handling by individuals with disabilities. Passenger baggage facilities shall be designed and operated without unattended physical barriers, such as gates, which are inaccessible for handicapped individuals.

(4) Telecommunications. Each terminal shall contain at least one telecommunications device for the deaf (TDD) to enable persons with hearing impairments to make phone calls from the terminal. The TDDs shall be placed in a clearly marked, readily accessible location, and airport signage shall clearly indicate the location of the TDDs

(5) Terminal Information Systems. Terminal information systems shall take into consideration the needs of individuals with disabilities. The primary information mode shall be visual words, or letters, or symbols, using lighting and color coding. Terminals shall also have facilities for providing information aurally.

(6) People Movers. Facilities for moving between the gate area and the aircraft, including, but not limited to, loading bridges and mobile lounges, shall be accessible to individuals with disabilities.

c. Accessibility Deadline. Each existing fixed facility should have been made accessible as soon as possible but no later than three years after April 5, 1990, the effective date of Part 382. Each such facility shall include:

(1) Accessible Route. There must be at least one accessible route from an accessible entrance to those areas in which the air carrier conducts activities related to the provision of air transportation; and

(2) Accessibility Features. The existing fixed facilities must have the accessibility features specified above for new or altered facilities.

d. Boarding Assistance. Boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Where not available, carriers shall use ramps, mechanical lifts, or other devices (not normally used for freight) for enplaning and deplaning qualified individuals with disabilities who need them. Such devices shall be maintained in proper working order (see AC 150/5220-21).

404. EXCEPTIONS TO REQUIREMENTS; WAIVERS.

a. Departures from the Scoping and Technical Standards of UFAS. Departures are permitted where substantially equivalent or greater access to and usability of the buildings or other fixed facilities is provided. For this purpose, the special technical provisions of Paragraph 4.1.6 (1)(a)(4) apply.

b. Operational Arrangements in Lieu of Facility Improvements. Operational arrangements were permitted for up to three years from the effective date of the DOT RA regulation or during the time when a waiver is in effect where substantially equal access to the facilities is provided.

c. Boarding Assistance. 14 CFR 382.39(a)(4) provides: "In the event that the physical limitations of an aircraft with less than 30 passenger seats preclude the use of existing models of lifts, boarding chairs, or other feasible devices to enplane a handicapped person, carrier personnel are not required to carry the handicapped person onto the aircraft by hand." (The intent of the regulation, in referring to "existing models," is to require the provision of lifts, boarding chairs, or other feasible devices when they become available on the market.)

405. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Complaint Resolution Mechanisms. Each carrier providing scheduled service shall provide a complaint resolution mechanism, making available 1 or 2 complaints resolution officials (CRO) at each airport it serves and establishing a procedure for the acceptance of written complaints.

b. Complaint Procedures. CROs shall accept oral complaints (delivered personally or by telephone) and written complaints postmarked no more than 45 days after the date of the alleged violation. Telephone or assisted calls shall be made available to the complainant without cost to him or her. If the CRO agrees that the complaint is valid, the CRO shall take action to prevent noncompliance or to rectify it, if it already has occurred. A written statement, summarizing the facts, and setting forth the provision of denial of a remedy shall be provided to the complainant within 10 calendar days of the complaint and shall inform the complainant of his or her right to pursue enforcement action by the DOT.

c. Written Complaints. Written complaints shall state whether a CRO has been contacted, the name of the CRO, and the date of the contact, and shall include any written response received from the CRO. The carrier shall make a dispositive written response within 30 days of receipt of the written complaint.

d. Enforcement Action by the DOT. Any complainant believing that a carrier has violated a provision of 14 CFR 382 may contact the DOT Office of the General Counsel. (See Paragraph 304.c. of this AC) Formal complaints may be filed under the applicable provisions of 14 CFR 302.

406. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.

a. Boarding Assistance. 14 CFR 382.39(a)(2) requires air carriers to provide boarding assistance, while 14 CFR 382.39(a)(4) provides an exception in the case of small aircraft, as specified above. The following conflicts and questions concerning boarding devices have arisen:

(1) DOT NPRM, "Nondiscrimination on the Basis of Handicap,"

53 FR 23574, June 22, 1988. The DOT first broached questions concerning boarding assistance in the NPRM issued, proposing regulations to implement the ACAA. In the DOT's view, the comments did not provide sufficient information to establish detailed requirements.

(2) DOT ANPRM, 55 FR 8078, March 6, 1990. In this ANPRM, the DOT asked for technical and economic information related to boarding assistance on small aircraft.

(3) ATBCB Suggested Standards for Boarding Chairs. When the DOT issued its final rule implementing the ACAA on March 6, 1990, it simultaneously published a SNPRM, 55 FR 8076, to amend the ACAA rule, 14 CFR Part 382. In the SNPRM, the DOT sought comment as to whether it should adopt standards for boarding chairs suggested by the ATBCB in its comments on Part 382.

(4) Society of Automotive Engineers (SAE) Aerospace Recommended Practices. The issue of standards for boarding chairs was resolved through issuance of AC No. 150/5220-21, "Guide Specification for Lifts Used to Board Airline Passengers with Mobility Requirements," by the FAA on [Get date of original]. It was amended on February 10, 1993, incorporating CHANGE 1.

(5) Responsibility for Boarding Devices. On September 6, 1991, the DOT amended 49 CFR Part 27, implementing the RA, to make the boarding requirement applicable, as well, to all airport owners and operators receiving Federal financial assistance (See 49 CFR 27.71(b)(4)). 14 CFR Part 382 further specifies that "Contracts or leases between carriers and airport operators concerning use of airport facilities shall set forth the respective responsibilities of the parties for compliance with accessibility requirements under this section (14 CFR 382.39(a)(2)) and 49 CFR 27.71."

(6) Temporary Exception for Small Aircraft. While neither of the sections addressed directly to airport operators and owners, regarding lifts or other devices for boarding, mentions the temporary exception for small aircraft, both rules are interpreted to provide a temporary exception, pending the manufacture and availability of suitable devices for boarding smaller aircraft (FAA Note: Several devices for boarding smaller aircraft are now available)

(7) Unresolved Questions on Boarding Devices. As of 1993, many of the boarding device questions still had not been resolved. On September 10, 1993, 58 FR 47681, the DOT issued an NPRM posing the following questions. In the same NPRM, the DOT asked for comments on other questions or conflicts that have resulted from issuance of the ACAA rule. The comment period ended December 9, 1993, but no final rule has been issued to date. Following are the questions raised in this NPRM:

(i) Boarding Lifts for Small Aircraft. Are there now available lifts that meet or can be modified to meet the FAA Advisory Circular's recommendations?

(ii) Boarding Lifts for Aircraft Seating Less than 19 Passengers. Are these available?

(iii) Suitability of Some Boarding Lifts for Certain Aircraft. What can be done to modify lifts that are compatible with most aircraft but cannot be used with certain aircraft in the 19-30 seat class?

(iv) Responsibility. The NPRM proposed to clarify the dual responsibility of the airports and air carriers to enable persons with disabilities to use smaller aircraft. The DOT proposed a written agreement to that effect between the parties, with a 9-month deadline for execution of the agreement. It asks, however, whether a longer period (12 months) or a shorter period (3 - 6 months) should be set for implementation of this requirement.

(v) Implementation of the Agreement. Is a 3-year period, from the effective date of a final rule, suitable for phasing in the boarding devices? Should it be longer or shorter?

(vi) Start or Termination of Service. What type of mechanism should be built into the agreement for air carriers that terminate service? How should new air carriers or those beginning service at a particular airport be treated?

(vii) Waivers. Should the DOT allow waivers for particular aircraft on the basis that use of a device would present an unacceptable risk of significant damage to the aircraft? Should it also allow waivers based on functional criteria (e.g., inability to use an on-board wheelchair, to occupy a non-exit seat if exit seating is precluded by FAA rules, or to be moved physically through narrow aisles)?

(viii) Entry-Level Boarding Devices: When the RA and ACAA regulations were issued, the DOT assumed that entry-level boarding devices ordinarily are available for boarding large aircraft. Is the contrary frequently the case?

(ix) Adaptability of Boarding Devices for 19-30 seat Aircraft to Larger Aircraft. Is adaptability possible and what additional costs are involved? Are there feasible alternatives to applying this requirement to the 31-seat and above category of aircraft?

(x) Hand Carrying. Should hand-carrying be required in emergency circumstances (e.g., a lift malfunction at the time of boarding), if the passenger requests it and air carrier personnel are available and capable of providing the service?

(xi) Boarding Chairs. Should boarding chairs for hand-carrying be required until lifts are made available? (FAA Note: As previously stated herein several lifts have become available since the NPRM was published.)

(xii) **Training for Operators of Boarding Lifts.** Should training be made available, what should the content and duration of the training be, and what would be the cost if DOT required this?

(xiii) **Costs for Small Airports.** Although the rule would apply only to "commercial service airports," those with more than 2,500 enplanements per year, the costs for the smaller airports in this range might be prohibitive. Should there be a waiver provision if the cost per boarding exceeded a certain amount; what should the boarding cost threshold be, and which airports should be deemed "small?" Alternatively, could this situation be solve by stretching the implementation schedule to 5 years? If a waiver is given, should use of a boarding chair or hand-carrying be required?

(xiv) **Impact upon Flight Schedules.** Given the hub and spoke systems into which commuter flights feed and the sometimes close schedule tolerances, will the use of lifts - especially those without integrated stairs for other passengers - result in significant delays? If delays would occur, what could be done to mitigate the problem?

b. Airport Ground Transportation Systems.

(1) **SNPRM, "Nondiscrimination on the Basis of Handicap in Air Travel, 14 CFR Part 382, 55 FR 8076, March 6, 1990.** In this SNPRM, the DOT sought comment on whether it should require accessibility in the ground transportation systems operated by air carriers or airport operators and owners, as part of the requirements in 14 CFR 382 and also in the RA regulation, 49 CFR Part 27.

(2) **ADA Ground Transportation Requirements.** The issue of ground transportation accessibility was resolved by enactment of the ADA and issuance of regulations implementing Titles II and III of the Act, July 26, 1991, effective January 26, 1992 (See discussion under ADA).

c. Airport Facility Requirements and Application of Section 504 to EAS Carriers.

(1) **Harmonizing ACAA and RA Regulations:** In 1990, the DOT published an ANPRM under the ACAA and an NPRM under the RA that would have harmonized the two regulations in regard to airport facility requirements. It received few responses, and many of the specific questions were resolved by the enactment of the ADA.

(2) **Additional Questions Regarding Harmonization of ACAA and RA Regulations.** In its NPRM of September 10, 1991, the DOT addressed the additional following areas (no final rule issued to date):

(i) **Program Accessible Path.** Should the DOT ACAA and RA rules contain a "program accessible path" provision, similar to the one used by the DOJ in its ADA rules, which would require accessibility from the beginning of a passenger's encounter with the airport facility to the aircraft door? What would be the cost of such a requirement, particularly for small airports? Should there be a phase-in period?

(ii) **Carts which Accommodate Wheelchairs.** The DOT noted that these are not generally available and thus proposed no requirements concerning intra-terminal transportation on carts.

(iii) **Information Media in Terminals.** The NPRM did not propose substantively changing the requirements in the existing ACAA and RA regulations. It noted that in at least some situations, relatively simple, inexpensive solutions would work.

(iv) **Individuals with Disabilities.** The NPRM proposed updating the terminology in both the ACAA and RA regulations, by changing "handicapped persons" to "individuals with disabilities."

(v) **Transition Plans.** The NPRM proposed requiring the submittal of transition plans by any airports which had not already done so, as specified in the original RA regulation when it was published.

(vi) **Essential Air Service Carriers.** Since the original RA regulation was promulgated before the EAS program came under DOT jurisdiction in January 1985 and thus was not mentioned in the regulation (even though it was covered due to the carriers' receipt of Federal financial assistance), the NPRM proposed specifically applying nondiscrimination on the basis of disability requirements to these subsidized carriers.

407. TO 499. RESERVED.

CHAPTER 5.

AMERICANS WITH DISABILITIES ACT OF 1990

500. BACKGROUND INFORMATION.

The ADA is codified at 42 U.S.C. 12101 Et seq. It contains five titles:

a. Title I - Employment.

b. Title II - Services, Programs, and Activities Provided by Public Entities.

(1) **Subtitle A** - Subtitle A covers all services, programs, and activities provided by public entities. It includes transportation, except by aircraft, to the extent not covered under Subtitle B.

(2) **Subtitle B** - Subtitle B covers transportation provided by public entities. It excludes transportation by aircraft and does not deal with airport terminals as such, but affects airport owners and operators as public entities.

c. Title III - Public Accommodations Provided by Private Entities.

d. Title IV - Telecommunications

e. Title V - Implementing Provisions.

501. APPLICABILITY (GENERAL) TO AIRPORTS.

The specific requirements of the following titles of the ADA are set forth in Chapters 6, 7, 8, and 9 of this AC.

a. Title I, Employment. Title I covers virtually all private and public employers who affect commerce and who had 25 employees on July 26, 1992, and after July 26, 1994, those who have 15 employees. (Note: Title II of the ADA, covering State and local government programs and activities, as set forth below, includes a prohibition against job discrimination by State and local government, regardless of the number of employees, after January 26, 1992.) Airports and airport authorities owned or operated by any State or local governmental structure are "public employers" for purposes of Title I and "public entities" for purposes of Title II. For those public employers who are subject to Title I, Title II adopts the employment standards of Title I. All other public employers are subject to the employment requirements of Section 504 of the RA. The Title I and Section 504 employment requirements now have been harmonized. See Chapter 6, Paragraph 608. of this AC for further discussion of conflicts between the accessibility acts, resolutions reached, and outstanding questions.

b. Title II, Services, Programs, and Activities of Public Entities. In effect, Title II applies to everything a public entity does. Airports and airport authorities owned or operated by any State or local governmental structure are "public entities" for purposes of Title II, even though airport terminals, per se, are not subject to the DOT's regulations implementing Subtitle B of Title II. All new buildings constructed by a public entity must be accessible. When alterations are undertaken, public entities must make the altered sections accessible. Facilities that existed on January 26, 1992, must be made "program accessible," when viewed in their entirety, through one or more methods such as alteration of existing facilities, acquisition or construction of additional facilities, relocation of a service or a program, or the provision of services at alternate accessible sites.

Public entities that receive Federal financial assistance also are subject to program or structural accessibility requirements in Section 504 of the RA, the ABA, and, as specified therein, to the ACAA. See Chapter 7, Paragraph 706 of this AC for further discussion of conflicts between the accessibility acts, resolutions reached, and outstanding questions.

(1) **Subtitle A, Public Entities.** Subtitle A covers all programs, including transportation provided by public entities, except by aircraft, to the extent not covered by Subtitle B.

(2) **Subtitle B, Public Entities - Transportation.** Subtitle covers transportation provided by any public entity, including an airport, that provides "designated public transportation," or intercity or commuter rail transport; any private entity, such as a contractor or an independent organization operating charter buses, for example; and any private entity that is not primarily engaged in the business of transporting people but operates a demand responsive or fixed route system or other transports individuals. Examples include rental cars, hotels, motels, shopping malls, individual concessions, etc. Recipients of Federal financial assistance must comply with both Section 504 of the Rehabilitation Act and the ADA, regarding the transportation requirements. See Chapter 6, paragraph 608 of this AC for discussion of conflicts between the accessibility acts, resolutions reached, and outstanding questions.

c. **Title III, Public Accommodations Provided by Private Entities.** Title III requires that all new places of public accommodation and commercial facilities be designed and constructed so as to be readily accessible and requires that examinations or courses related to licensing or certification for professional and trade purposes be accessible. The ADA enumerates 8 categories of "places of public accommodation" whose operations affect commerce and thus are covered. In existing facilities, barrier removal need be accomplished only when it is "readily achievable" to do. If barrier removal is not possible under this standard, alternative steps that are readily achievable must be taken.

d. **Title IV, Telecommunications.** Title IV requires that each telecommunications common carrier providing telephone voice transmission services provide, in compliance with regulations prescribed under Title IV, throughout the area in which it offers service, telecommunications relay services, individually, through designees, through a competitively selected vendor, or in concert with other carriers, which enable persons with hearing disabilities to communicate by telephone with the assistance of telecommunications devices. It also requires that any television public service announcement that is produced or funded in whole or in part by any agency or instrumentality of the Federal Government shall include closed captioning of the verbal content of such announcement. The lead agency is the Federal Communications Commission, charged with the issuance of regulations to implement Title IV.

e. **Title V, Implementing Provisions.** Title V covers miscellaneous provisions concerning the applicability of standards; the relationship of the ADA to other Federal laws or laws of any State or political subdivision of any State or jurisdiction; insurance and medical service policies; the non-immunity of States under the ADA; prohibitions against retaliation and coercion; the issuance of ADA guidelines or standards; attorney's fees; technical assistance; coverage of the Congress and the agencies of the Legislative Branch; the illegal use of drugs; exclusions from the definition of "disability; certain amendments to the RA; alternative means of dispute resolution; and severability of unconstitutional provisions, is any are found to exist in the ADA.

502. TO 599. RESERVED.

CHAPTER 6.

TITLE I, EQUAL EMPLOYMENT OPPORTUNITY FOR INDIVIDUALS WITH DISABILITIES, THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS

600. BACKGROUND INFORMATION.

- a. **Act.** American with Disabilities Act, Title I
- b. **Lead Agency.** EEOC, Section 106 of the ADA.
- c. **Compliance Agency.** EEOC
- d. **Standards.** EEOC Standards in Title I regulation; Section 503 of the RA Standards for Federal Contractors and Subcontractors; and Section 504 Standards, plus the ADA, for Public Employers subject to Section 504 as well as the ADA. See Paragraph 608. below for further discussion on standards.

601. APPLICABILITY.

- a. **Private Entities.** Title I is applicable to businesses, corporations, partnerships, associations, unions or other labor organizations, employment agencies, labor-management committees, management organizations, and any other form of private entity.
- b. **State and Local Governments.** Title I also is applicable to all State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State and local governments, whether or not they receive Federal financial assistance. (Note: The ADA is not applicable to the Federal Government, which is covered by Section 501 of the RA, as amended.)
- c. **Exemptions.** The ADA is not applicable to the following organizations: private, tax-exempt clubs; Indian tribes; and religious organizations.
- d. **Persons Protected.** Title I protects 3 categories of qualified individuals with disabilities from employment discrimination - those that have a disability; those that have a record of a disability; and those that are regarded as having a disability.
- e. **Disabilities.** Disabilities include physical or mental impairments that substantially limit, on a permanent basis, a major life activity such as seeing, hearing, speaking, breathing, performing manual tasks, walking, caring for oneself, learning or working. The fact that medications, auxiliary aids, or other mitigating measures allow the person to correct or control the disability does not affect his or her protection under the ADA.
- f. **Qualified Person with a Disability.** To be a qualified individual with a disability, the person must be able to perform the essential functions of a job with or without reasonable accommodation. The requirement is one of nondiscrimination, and no affirmative action obligations are imposed. Title I also protects persons who have a relationship with or associate with individuals with disabilities.
- g. **Physical or Mental Impairments.**
 - (1) **Physical Impairments.** These include: physiological disorders or conditions; cosmetic disfigurement, or anatomical loss, affecting one or more of the body systems - neurological; musculoskeletal; special

sense organs (including speech organs that are not respiratory such as vocal cords, soft palate, tongue, etc.); respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine.

Specific examples include: orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. (See Paragraph 607. c., d., and f. below for exceptions relating to drug addiction, alcoholism, and direct threats to health and safety).

(2) Mental Impairments. These include mental or psychological disorders, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

602. EMPLOYMENT PRACTICES.

The following employment practices are covered: recruitment; hiring; promotion; training; lay-off; pay; firing; job assignments; leave; benefits; and all other employment-related activities or practices.

603. ESSENTIAL FUNCTIONS OF A JOB.

Factors to consider in determining which functions are essential include: whether performance of that function is the reason the job exists; whether the function can be distributed among others; and the expertise or skill required to perform the function.

604. REASONABLE ACCOMMODATION.

To enable a qualified applicant or employee with a disability to apply for a position, to perform the essential functions of a job, or to enjoy all aspects of the employment situation, the employer must provide reasonable accommodation, such as: providing or modifying equipment or devices; job restructuring; part-time or modified work schedules; reassignment to a vacant position; adjusting or modifying examination, training materials, or policies; providing readers and interpreters; and making the workplace readily accessible.

605. MEDICAL EXAMINATIONS; PREEMPLOYMENT QUESTIONS.

Employers may ask an applicant questions about their ability to perform job-related functions, but the questions may not be phrased in terms of a disability. Employers also may ask applicants to describe or to demonstrate how, with or without reasonable accommodation, they will perform job-related functions. It is unlawful to require an applicant to take a medical examination before a job offer is made and unless all applicants for that type of position are required to take examinations. A job offer, however, may be conditioned on the results of the medical examination.

606. PRE-EMPLOYMENT INQUIRIES REQUIRED BY LAW OR REGULATION.

a. Federal Contractors and Subcontractors. Federal contractors and subcontractors subject to the affirmative action requirements of Section 503 of the RA may invite individuals with disabilities to self-identify on a job application form or other pre-employment inquiry. Employers must observe the Section 503 requirements regarding the process and confidentiality.

b. Requirements of Other Laws or Regulations. Pre-employment inquiries are allowed if required by another Federal law or regulation, such as those applicable to disabled veterans and veterans of the Vietnam era.

607. EXCEPTIONS.

a. Undue Hardship. Reasonable accommodation need be made only to known disabilities and only if it does not result in an undue hardship (significant difficulty or expense) on the operation of the organization, considered in light of its size, resources, nature, and structure of the employer's operation. When undue hardship exists, the employer must consider alternative accommodations, or, if the individual with disabilities is willing and it is legally permissible, allow the employee or applicant to pay that portion of the cost which would constitute an undue hardship.

b. Modification of Existing Facilities. Unlike Titles II and III, Title I does not require alterations of existing facilities to make them accessible. Accessibility is not required until a particular applicant or employee needs reasonable accommodation. In this instance, the modifications should meet that individual's needs. In facilities that will not be used by employees, accessibility alterations need not be made. The EEOC encourages movement toward general accessibility, however, while Titles II and III of the ADA, as well as other laws, levy requirements that, in effect, often make modification of existing facilities necessary. (See Paragraph 604. above)

c. Direct Threats to Health and Safety. Employers need not hire or retain individuals with a disability that pose a direct threat, i.e., a significant risk of substantial harm, to his or her health or safety or that of others. The "direct threat" must be established through objective, medically supportable methods.

d. Alcohol Use that Adversely Affects Performance. Alcoholism is considered a disease and thus is protected by the ADA to the extent that reasonable accommodation, such as the provision of time for attendance at rehabilitation sessions, must be afforded. Where alcoholism continues despite such reasonable accommodation and where it affects performance or conduct, an employer can discipline, discharge, or deny employment.

e. Sexual and Other Behavior Disorders. Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders are not covered. Similarly, other behavior disorders not resulting from physical impairments, such as compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs are not protected.

f. Current Illegal Use of Drugs. Persons currently using drugs illegally are not "qualified individuals with a disability" and are not covered by the ADA. Tests for the illegal use of drugs are not considered "medical examinations" under the ADA, which is neutral regarding drug tests in that it does not encourage, prohibit, or authorize drug tests.

g. Homosexuality and Bisexuality. Homosexuality and bisexuality are not disabilities under the ADA and are not covered

h. Smoking. The ADA does not prohibit smoking nor does it require State or local governments to accommodate smokers by permitting them to smoke in public transportation facilities.

608. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.

a. Federal and State Health and Safety Laws. The ADA does not preempt the health and safety requirements of other Federal laws, even if they affect the employment of a qualified individual with a disability. The employer must comply with the other Federal law and need not defend the standard used (such as showing that it is job related or a matter of business necessity). The employer must consider, however, whether reasonable accommodation, consistent with the other law, is possible. Where it is possible to comply with both the ADA and the other Federal law, the employer must do so.

b. Workers' Compensation Programs. Injured workers who are eligible for Workers' Compensation Programs are not necessarily covered by the ADA. The person must be a "qualified individual with a disability," capable of performing the essential functions of a position, with or without reasonable accommodation. There must be a physical or mental impairment that "substantially limits" a major life activity, and the impairment must be long-term or permanent.

c. Employment Coverage under Title II and Sections 503 and Section 504 of the RA. Title II of the ADA prohibits all public entities, regardless of workforce size, from discriminating against qualified individuals with disabilities, in all employment practices. The lead agency for enforcement of the employment requirements of Title II is the DOJ. Title I of the ADA (lead agency - EEOC) applies to public entities with 15 or more employees (effective July 26, 1994). Section 504 of the RA applies to public entities receiving Federal financial assistance and to the Federal Government. Section 503 of the RA applies to Federal contractors and subcontractors. The lead agency for Section 504 is the DOJ, and for Section 503, the Department of Labor (DOL).

Many of the ADA provisions regarding employment were based on the RA and its implementing regulations. Initially, entities in compliance with the requirements established under the RA, therefore, needed look to the ADA only for additional requirements established thereunder. The conflict between the two employment standards was resolved on October 29, 1992, when legislation reauthorizing the Rehabilitation Act of 1973 was signed by the President. The law amended Section 504 to conform its employment provisions to those of Title I of the ADA. As a result, the standards of Section 504 and Title I now are identical.

The nondiscrimination requirements of a Federal contractor or subcontractor under Section 503 of the RA are essentially the same as those under the ADA. Section 503, however, calls for affirmative action that must be continued, even if it does not exist under the ADA.

609. COMPLIANCE, ENFORCEMENT AND REMEDIES.

a. Complainant's Responsibility. Complainants can file a charge with the EEOC in Washington, D.C., or at any of its offices throughout the United States, or at designated State human rights agencies within 180 days of the discrimination. Under the ADA, the EEOC must defer charges of discrimination to the designated State human rights agencies (also termed State and Local Fair Employment Practice Agencies or FEPAs). Where a worksharing agreement so specifies, the charge may be processed initially by either the EEOC or the FEPA. If a State or local law also provides relief, in most cases, the complainant has 300 days to file a charge with the State or locality.

b. EEOC Action. The EEOC or the FEPA will investigate and attempt to resolve the charge through conciliation. The procedures are the same as those followed under Title VII of the Civil Rights Act of 1964. If a charge is not settled, the EEOC considers whether it should litigate on behalf of the charging party. If the EEOC decides not to litigate, it issues a Notice of Right to Sue to the charging party, permitting him or her to file a civil action in a District Court of the United States.

c. Remedies. The ADA incorporates the remedies available under Title VII, including hiring, promotion, reinstatement, back pay, front pay, restored benefits, expert witness fees, court costs, and attorney's fees. The ADA also provides reasonable accommodation as a remedy. Compensatory and punitive damages may be available in cases of intentional discrimination or where the employer did not make a good faith effort to provide reasonable accommodation.

d. Coordination between Lead Agencies. In view of their respective lead roles, the EEOC, DOJ, and DOL coordinate their enforcement actions.

610. TO 699. RESERVED.

CHAPTER 7.

TITLE II, SUBTITLE A, NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES, THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS

700. BACKGROUND INFORMATION.

a. Lead Agencies. DOJ for program accessibility, DOJ for employers subject to Title II employment nondiscrimination; EEOC for employers subject to Title I employment nondiscrimination; DOL for employers subject to Section 503 of the RA.

b. Compliance Agencies. EEOC, DOJ and eight designated Federal agencies (See Chapter 7, paragraph 708.e. of this AC).

c. Standards. UFAS or ADAAG for program and architectural accessibility; Title I or UFAS for employment; Section 503 of the RA for employment in Federal contracting and subcontracting (similar to Title I requirements, except for additional affirmative action requirement under Section 503).

701. COVERAGE.

The following categories of programs or activities are covered by Title II of the ADA:

a. General Public Contact. This category of programs or activities includes communication with the public (telephone contacts, office walk-ins, or interviews).

b. Programs that Provide State or Local Benefits or Services to the Public. These include programs or activities directly administered by the public entities for program beneficiaries and participants.

c. Employment Practices. Title II of the ADA applies to all activities of public entities, including employment practices, regardless of the workforce size.

d. Contracting Practices. A public entity may not discriminate on the basis of disability in contracting for the purchase of goods and services.

e. Licensing Practices. A public entity may not discriminate on the basis of disability in its licensing, certification, and regulatory activities.

702. APPLICABILITY.

a. Public Entities. Subpart A of Title II of the ADA applies to all public entities, defined as State and local governments, their departments and agencies, and any other instrumentalities or special purpose districts of State and local governments, whether or not they received Federal financial assistance, and, in regard to employment practices, regardless of workforce size. Airports and airport authorities owned or operated by a State or local governmental structure are "public entities" for purposes of Subpart A of Title II, even though airport terminals, per se, are not subject to the DOT's regulations implementing Subpart B of Title II, and transportation by aircraft is not covered in either Subpart A or B of Title II, due to coverage under the ACAA. (Note: Subpart A of Title I of the ADA is not applicable to the Federal Government, which is covered by Section 504 of the RA, as amended).

b. Persons Protected. Title II protects qualified individuals with a disability - those who meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services, with or without --

(1) **Reasonable Modifications.** Reasonable modifications must be made to a public entity's rules, policies, or practices;

(2) **Removal of Barriers.** Architectural, communication, or transportation barriers must be removed; or

(3) **Provision of Auxiliary Aids and Services.** Aids and services must be provided, other than those that are purely personal in nature.

(4) **Discrimination Due to Association.** Title II also protects persons who have a relationship with or associate with persons with disabilities.

c. Disabilities Covered. See Chapter 6, Paragraph 601.e. and g. of this AC, concerning Title I, "Equal Employment Opportunity for Individuals with Disabilities," of the ADA.

703. EMPLOYMENT.

For those public entities that are subject to Title I of the ADA, Title II adopts the standards of Title I. In all other cases, the Section 504 standards of the RA apply. (See Chapter 6, Paragraph 608.c. of this AC, regarding resolution of conflict between employment standards in Title I of the ADA and in Section 504 of the RA.)

704. PROGRAM ACCESSIBILITY.

a. Existing Facilities.

(1) **Compliance Standard.** A public entity's services, programs, or activities, when viewed in their entirety, must be readily accessible to and usable by individuals with disabilities. The standard applies to all existing facilities, but public entities are not necessarily required to make each of their existing facilities accessible.

(2) **Deadline for Achieving Program Accessibility.** The deadline for achieving program accessibility was January 26, 1992. If structural changes were needed, they were to be completed by January 26, 1995.

b. New Construction and Alterations. All facilities designed, constructed, or altered by, on behalf of, or for the use of a public entity must be readily accessible to or usable by individuals with disabilities, if the construction or alteration was begun after January 26, 1992.

(1) **Architectural Standards.** Public entities may choose between UFAS, under Title II, or use ADAAG, the standard set in Title III of the ADA. If ADAAG is chosen, public entities are not entitled to the elevator exemption (permitting certain buildings under 3,000 square feet per floor or under three stories to be constructed without an elevator). Once the choice is made, the standard must be followed throughout the facility.

(2) **Alternatives to Structural Changes.** Nonstructural methods for achieving accessibility to programs include acquisition or redesign of equipment, assignment of aides to beneficiaries, and revision of services at alternate accessible sites. A public entity also may offer separate or special programs, if they are specifically designed to meet the needs of the individuals with disabilities who will use them. Public entities cannot deny qualified individuals with disabilities the right to participate in the regular program, however, and special programs cannot be used to avoid the requirements of Title II. The special programs should be considered a form of access for those who prefer them, rather than as a substitute for overall accessibility to regular programs.

c. Additional Requirements.

(1) **Curb Cuts or Ramps.** Public entities with authority over streets, roads, or walkways were required to prepare a schedule in their transition plans for providing curb cuts or ramps where pedestrian walkways cross curbs. Priority construction was to be given walkways serving State and local government offices and facilities, transportation, places of public accommodation, employees, and finally, walkways serving other areas. Generally, newly-built or altered streets must have curb cuts or ramps wherever there are barriers to entry from a sidewalk or path, unless alternative routes exist which result in only a marginally longer route. Similarly, newly-built sidewalks and paths must have curb cuts or ramps to provide access at street, road, or highway intersections. The "Undue Burden" and "Fundamental Alternation" exceptions apply in the case of alterations requiring curb cuts or ramps, as well as other forms of operation. In some instances, installing curb cuts or ramps upon request in areas frequented by persons with disabilities affords compliance.

(2) **Maintenance.** Public entities must maintain accessible features in working order and make repairs promptly.

(3) **Existing Parking Lots and Garages.** Public entities must provide an adequate number of parking spaces in all lots and garages within their jurisdiction.

(4) **Historic Preservation Programs.** Priority must be given to physical access in achieving program accessibility, since physical access is necessary to experience the primary benefits of the programs. Where the usual standards will result in destruction of the historic significance of a building, alternative standards may be used, following consultation with the appropriate advisory board designated in the UFAS or ADAAG and after inviting the participation of interested persons.

(5) **Surcharges.** Public entities may not impose surcharges on accessibility features provided for individuals with disabilities.

(6) **Unnecessary Inquiries.** A public entity may not make unnecessary inquiries into a prospective program participant's disability. Inquiries to ensure safe participation and other valid purposes are permissible.

(7) **Communications.** Public entities have the responsibility to ensure that their communications with individuals with disabilities are as effective as with other persons and must provide auxiliary aids and services, as follows:

(i) **Hearing.** The following may be needed: qualified interpreters, notetakers, computer-aided transcription services, written materials, telephone handset amplifiers, assistive listening systems, telephones compatible with hearing aids, closed caption decoders, open and closed captioning, telecommunications devices (TDDs), videotext displays, and exchanges of written notes. (See Paragraph 705 of this chapter for exceptions.)

In the case of public service announcements or other television programming produced by public entities, closed captioning is sufficient to meet the requirement.

(i) **Vision.** Examples of aids and services include: qualified readers, taped texts, audio recordings, Brailled materials, large print materials, and assistance in locating items.

(iii) **Speech.** Examples include: TDDs, computer terminals, speech synthesizers, and communication boards.

(8) **Telephone Communications.** Public entities may meet their telephone communications requirements through telephone relay services. Where such services are available, public employees must be trained to accept and handle relayed calls.

Where a public entity provides emergency telephone services such as "911" services, it must also do so for individuals with hearing or speech disabilities through a "direct access" system that does not involve relays. The direct access must be to all the emergency services offered - typically, police, fire, ambulance, and poison control.

(9) Information and Signage. Public entities must ensure that all interested persons can obtain information on accessible services, activities, and facilities. The international symbol for accessibility shall be used at all accessible entrances. Signage at inaccessible entrances shall direct persons to accessible entrances and information.

705. EXCEPTIONS.

Accessibility requirements may be modified or do not apply in the following situations:

a. Current Illegal Use of Drugs. As in the employment situation, the current illegal use of drugs by an individual enables a public entity to withhold services or benefits. "Current use" covers use that was sufficiently recent to justify a belief that the use is ongoing.

b. Sexual and Other Behavior Disorders. As in the employment situation, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, and other sexual behavior disorders are not protected under the ADA's requirements for program accessibility. Similarly, other behavior disorders not resulting from physical impairments, such as compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from the current illegal use of drugs are not protected.

c. Safety Considerations. A public entity may impose legitimate safety requirements necessary for the operation of its services, programs, or activities, but these must be based on real risks and not speculation.

d. Alteration of the Fundamental Nature of a Program, Practice, or Activity. Public entities must reasonably modify its programs, practices, or activities, but not to the extent where the accommodation would alter their fundamental nature.

e. Personal Services and Devices. A public entity need not provide personal or individually prescribed devices, such as wheelchairs, prescription eyeglasses, hearing aids, prostheses, etc. It need not provide assistance in eating, dressing, toileting, and other personal functions, unless the public entity is in the business of doing so as a hospital, nursing home, or similar organization.

f. Activities of Licensed or Certified Entities. The activities of persons or organizations licensed or certified by a public entity are not covered under Title II of the ADA, simply on the basis that the license or certificate was issued by a public entity.

g. Homosexuality and Bisexuality. As in the case of employment, homosexuality and bisexuality are not considered impairments and are not covered by the ADA.

h. Auxiliary Aids and Services. Primary consideration must be given to providing the auxiliary aid or service requested by an individual with a disability, unless the public entity can demonstrate that another method is equally effective, or that the chosen method would fundamentally alter the service or program, or that the chosen method would result in an undue financial and administrative burdens.

i. Telephone. Relay Service within a Public Entities' Own Emergency System. An exception to the "direct access" requirement exists where a public entity operates a relay system within its own emergency system, provided that the services for non-voice calls are as effective as those for voice calls.

706. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.

a. Program and Architectural Accessibility - Choice of UFAS and ADAAG Standards. As previously discussed herein, the ATBCB has proposed adoption of the ADAAG for the ADA, the RA, and the ABA. Until this

question is resolved, public entities that are subject to the RA as well as the ADA may choose between the two standards. Neither can be characterized as "more or less stringent" than the other. The DOJ, in its Title II Technical Assistance Manual, Americans with Disabilities Act (November 1993) highlighted and summarized some of the major differences between ADAAG and UFAS.

b. Employment Standards. For those public entities that are subject to Title I of the ADA (those with 15 or more employees, effective July 26, 1994), Title II adopts the standards of Title I. In all other cases, the Section 504 standards of the RA apply. On October 29, 1992, the President signed legislation reauthorizing the Rehabilitation Act of 1973 and amending Section 504 to conform its employment provisions to those of Title I of the ADA. The two standards now are identical.

Section 503 of the RA continues to apply Federal contractors and subcontractors. Section 503 requirements are essentially the same as those of Title I of the ADA, except for the affirmative action required under Section 503.

c. Relationships between Public Entities and Private Entities. The relationships between public entities and private organizations can result in dual responsibilities, affected by both Titles II and III of the ADA. Following are examples:

(1) Concessions on Airports. A restaurant, news and gift, candy, and T-shirt concession, operated by entrepreneurs as private entities, lease space on an airport owned by a local government. As private entities operating public accommodations, the concessions are subject to Title III of the ADA. The airport, as a public entity, however, is subject to Title II. The airport is obligated to ensure through the leases executed with the concessionaires or through its own actions that the Title II obligations are met, even though the concessions are not directly subject to Title II.

Airport operators and owners have flexibility in determining how and to what extent the Title II responsibilities and costs will be apportioned between the airport and concessionaires. Following are examples based on information provided by various airports:

(i) New or Empty Concession Space. Some airports assume total responsibility for meeting the requirements of Title II when requesting bids on new or empty concession space, on the theory that this enhances the value of the space and attracts bidders.

(ii) Small or Disadvantaged Business Enterprises (DBE). Some airports assume partial or total responsibility for meeting the requirements of Title II when dealing with existing small or DBE concessions or when attempting to meet small or DBE goals, as part of the airports' programs to encourage such participation.

(iii) Major Concessions and Sublessees. Some airports require major concessions, whether current or prospective tenants, to assume total responsibility for the Title II, as well as the Title III, requirements, while other airports permit the major concessionaire to decide how the responsibility will be allocated between the major concessionaire and its sublessees.

In all instances, final responsibility for adherence with Title II requirements rests with the public entity, which it must meet either directly or through the agreements it executes with lessees and sublessees.

(2) Airport Terminals Owned by Private Entities. An airline leases space on an airport owned by a city to build its own terminal. After 30 years, the terminal will revert to the airport. In the meantime, the airline pays a guaranteed minimum monthly rent plus a portion of its gross receipts. Although the airline is subject to the Air Carrier Access Act as a form of transportation, rather than to Titles II and III of the ADA, and even though airline terminals are not covered as such under Title III of the ADA, the terminal is a public accommodation operated by a private entity and is covered, therefore, by Title III. Since it is located on an airport owned by a city, that public entity is subject to Title II and must ensure that the airline meets these requirements through the leasing arrangement. During the time the terminal is operated as a private entity, the airline must ensure that all Title III requirements are met by itself, as well as by its own lessees and sublessees. The airport must ensure, through its leasing agreement with the airline that the latter also will

cause its lessees and sublessees to conduct their operations in ways that will enable the airport to meet its Title II obligations, as well. Once the terminal reverts to the airport, this public entity must continue to ensure adherence to Title II requirements, and the private entities must continue to adhere, as well, to the Title III requirements.

(3) Industrial Parks. A city leases land on an airport owned by it to a number of private businesses to operate an industrial park. Although all of the businesses are private entities, subject ordinarily only to Title III, the city, as a public entity subject to Title II, has the responsibility to ensure that Title II requirements are met. As in the case of the concessions, the city may ensure this through its leasing arrangements and may apportion the responsibilities and costs as it deems appropriate. The ultimate responsibility for Title II compliance, however, remains with the city.

(4) Off-Airport Investment or Other Properties. A State Department of Transportation owns two buildings not located on airports. One is occupied by employees of the State Department of Transportation; the second is rented out to private entities as an investment to help support the State's transportation programs, including the airports. In the building occupied by the State's employees, the State is subject to Title II, and there are no Title III requirements. In the second building, the State, as a public entity and landlord is subject to Title II, while its tenants, if private entities, are subject to Title III, but also subject to Title II indirectly, through the leasing agreements, in order to allow the State to meet its Title II obligations.

d. Relationship of Title II to Other Laws.

(1) Rehabilitation Act. The DOJ interprets Title II to provide protection to individuals with disabilities that is at least equal to that provided by Title V of the RA in its Sections 501, 503, and 504. Title II may not be interpreted to provide a lesser degree of protection.

(2) Other Federal and State Laws. Title II does not preempt other Federal laws or State laws that provide more protection for individuals with disabilities than Title II does. Title II does preempt State laws that provide less protection or conflict with Title II. (See Chapter 6, Paragraph 608. of this AC, regarding Federal health and safety laws.)

707. ADMINISTRATIVE REQUIREMENTS.

a. Compliance Planning. As was the case under the RA, Title II calls for compliance planning, as follows: preparation of a self-evaluation; development of a grievance procedures, designation of a person to oversee Title II compliance; development of a transition plan for necessary structural changes; and retention of the self-evaluation for three years. Compliance with the requirements of Title II by January 26, 1992, was necessary whether or not the self-evaluation had been completed. Self-evaluations completed under Section 504 of the RA cannot serve as self-evaluations under Title II, unless it is clear that all possible areas of self-evaluation were covered at that time and remain relevant. For information on what should be contained in a self-evaluation and transition plan, see the DOJ Technical Assistance Manual For Title II.

b. Notice to the Public. A public entity must provide notice to the public concerning its Title II responsibilities. Methods include: handbooks, manuals, pamphlets, the display of posters, or the broadcast of information by television or radio. In providing the notice, the public entity must comply with the Title II requirements for communicating effectively with individuals with disabilities.

708. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Complaints Regarding Programs, Benefits, and Services. Complaints must be filed in writing with 180 days of the alleged discrimination (unless the time has been extended by the Federal agency receiving the complaint), describe the alleged discrimination and date of same, include the name and address of the complainant, and be signed by the complainant or his or her representative. Class complaints shall provide the identity (by name, if possible) of the alleged victims of discrimination.

b. Processing Agencies. Complaints may be filed with any of the following agencies:

- (1) Federal agencies providing financial assistance, if that agency is the subject of the complaint
- (2) Federal agencies designated under Title II to investigate Title II complaints.
- (3) The DOJ.

c. Relationship between Section 504 of the RA and Title II of the ADA. Agencies that provide financial assistance will be processing both types of complaints. The substantive standards are generally the same, but Title II does not displace any existing Section 504 jurisdiction.

d. Complaints under Title II Regarding Employment. Employment complaints against State or local governments subject to Title II may be filed with:

- (1) **The Federal agency providing financial assistance to the State or local government (public entity).**
- (2) **The EEOC, if the public entity also is subject to Title I of the ADA.**
- (3) **The designated Federal agency under Title II.**

e. The Designated Federal Agencies. The jurisdiction of each designated agency basically follows its functional or program responsibilities. The designated agencies are:

- (1) **Department of Agriculture.**
- (2) **Department of Education.**
- (3) **Department of Health and Human Services.**
- (4) **Department of Housing and Urban Development.**
- (5) **Department of the Interior.**
- (6) **Department of Justice.**
- (7) **Department of Labor.**
- (8) **Department of Transportation.**

f. Multi-jurisdictional Complaints. Complaints involving more than one Federal agency must be filed with the DOJ to: Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, P. O. Box 66118, Washington, D.C. 20035-6118. The DOJ will determine which agency will serve as the designated agency.

g. Exhaustion of Remedies. Exhaustion of remedies is not required under Title II of the ADA. Complainants may file directly with a Federal agency, without using a grievance procedure established by a State or local government. They also may file a court action, without filing with a Federal agency. The ADA, however, also encourages use of alternative dispute resolution mechanisms.

h. Remedies. The Federal processing agency will resolve the complaint informally; or, issue a detailed letter with findings of fact, conclusions of law, and the steps to be taken as remedies, where appropriate; or, where voluntary compliance is not possible, refer the matter to the DOJ for enforcement. The DOJ may proceed by filing suit in a Federal

District Court. Individuals also have a private right of action under both Section 504 of the RA and under the ADA. In cases where there is Federal funding, termination of funding is an enforcement option. Remedies in either an administrative proceeding or court action include attorney's fees and litigation expenses (expert witness fees, travel expenses, costs, etc.) for either the prevailing complainant/plaintiff or defendant, except the United States. A prevailing defendant, however, cannot recover attorney's fees and litigation costs unless a court finds that the plaintiff's action was frivolous, unreasonable, or without foundation.

709. TO 799. RESERVED.

CHAPTER 8.

SUBTITLE B OF TITLE II, TRANSPORTATION PROVIDED BY PUBLIC ENTITIES, AND TITLE III, TRANSPORTATION PROVIDED BY PRIVATE ENTITIES, THE AMERICANS WITH DISABILITIES ACT SPECIFIC PROVISIONS

800. BACKGROUND INFORMATION.

a. Lead Agency. DOT

b. Compliance Agencies. DOT, for recipients of Federal financial assistance from the DOT, under 49 CFR Part 27, subpart F. The DOJ also serves as a compliance agency for public entities, whether or not they receive Federal financial assistance. In addition, the DOJ serves as the compliance agency for private agencies, whether or not they receive Federal financial assistance, as provided in 28 CFR Part 36, the DOJ regulations implementing Title III of the ADA.

c. Standards. The standards set forth in 49 CFR Part 37, in the ADAAG standards that serve as Appendix A to Part 37, and 49 CFR Part 38 apply.

801. COVERAGE.

49 CFR Part 37 covers the transportation related provisions of Titles II and III of the ADA. 49 CFR Part 38 provides the accessibility specifications for transportation vehicles.

802. KEY TRANSPORTATION DEFINITIONS.

This paragraph does not include definitions commonly understood such as "Transportation Authority," definitions which appear elsewhere in this AC such as "Disability," or definitions not relevant to airport operations such as "Commuter Rail Car."

a. "Alteration " means a change to a facility, including but not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, changes or rearrangement in structural parts, elements, or the plan for configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, asbestos removal, or changes to mechanical or electrical systems are not "alterations," unless they affect the usability of the building or facility.

b. "Automated Guideway Transit System (AGT)" or "People Mover" means a fixed-guideway transit system which operates with driverless individual vehicles or multi-car trains. Service may be on a fixed schedule or in response to passenger-activated call buttons.

c. "Auxiliary Aids" include qualified interpreters, notetakers, transcription services, writing materials, telephone headset amplifiers, assistive listening devices, assisted listening systems, telephones compatible with hearing aids, closed caption decoders, closed and open caption decoders, text telephones (telephone devices such as TDDs), videotext displays, or other aural delivery devices; qualified readers, taped text audio recordings, Brailled materials, large print materials, or other materials for visual delivery; or the acquisition or modification of equipment and devices.

d. "Bus" means a self-propelled vehicle, generally rubber-tired, used on streets, highways, and busways, including but not limited to minibuses, 40- and 30-foot buses, articulated, double-deck, and electrically-powered trolley buses, used by public entities to provide designated public transportation service and by private entities to provide transportation service, including, but not limited to, specified public transportation services. Self-propelled, rubber-tired vehicles designed to look like antique or vintage trolleys are considered buses.

e. "Commuter Bus Service" means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district, and outlying suburbs. Commuter bus service may also include other service, specified in the provisions of the DOT rule, that is characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation (such as city buses, taxis, etc.).

f. "Demand Responsive System" means any system of transporting individuals, including the provision of designated public transportation service by public entities and the provision of transportation service by private entities, including but not limited to specified public transportation, which is not a fixed route system.

g. "Designated Public Transportation" means transportation provided by a public entity (other than public school transportation) by bus, rail, or other conveyance (other than transportation by aircraft or intercity or commuter rail transportation) that provides the general public with general or special service, including charter service, on a regular and continuing basis.

h. "Facility " means all or any portion of buildings, structures, sites, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

i. "Fixed Route System" means a system of transporting individuals (other than by aircraft) including the provision of transportation service by public entities and the provision of transportation service by private entities, including but not limited to, specified public transportation service, on which a vehicle is operated along a prescribed route according to a fixed schedule.

j. "Operates" includes, with respect to a fixed route or demand responsive system, the provision of transportation service by the public entity itself or by a person under a contractual or other arrangement or relationship with a public entity.

k. "Over-the-Road Buses" means a bus characterized by an elevated passenger deck located over a baggage compartment.

l. "Private Entity" means any entity other than a public entity.

m. "Public Entity" means any State or local government, or any department, agency, special purpose district, or other instrumentality of same.

n. "Rapid Rail" means a subway-type transit vehicle railway operated on exclusive private rights of way with high level platform stations. Rapid rail also may operate on an elevated or at grade level track separated from other traffic.

o. "Specified Public Transportation" means transportation by bus, rail, or any other conveyance (other than by aircraft) provided by a private entity in the business of providing transportation to the general public, with general or special service (including charter) on a regular and continuing basis.

p. "Vanpool" means a voluntary commuter ridesharing arrangement, using vans with greater than 7 seats (including the driver's), or buses, which provides transportation to groups traveling directly from their homes to their

regular places of work within the same geographical area, and in which the commuter/driver does not receive compensation beyond reimbursement for the cost of providing the service.

q. "Wheelchair" means a mobility aid belonging to any class of three or four-wheeled devices, usable indoors, whether operated manually or powered. A "common wheelchair" does not exceed 30 inches in width and 48 inches in length, measuring two inches above the ground, and does not weigh more than 600 pounds when occupied.

803. GENERAL APPLICABILITY.

The transportation requirements apply to the following as specified:

a. Public Entities Providing "Designated Public Transportation" or Intercity or Commuter Rail Transport. Public entities, whether or not they receive Federal financial assistance, are covered if they provide designated public transportation or intercity or commuter rail transport.

b. Private Entities Providing "Specified Public Transportation." Private entities such as contractors or independent organizations operating specified public transportation, such as charter buses, are covered.

c. Private Entities Not Primarily Engaged in the Business of Transporting People. Private entities not primarily engaged in the business of transporting people, but who operate a demand responsive or fixed route system or otherwise transport individuals, are covered. These would include rental car organizations, hotels, motels, shopping malls, individual concessions, etc.

d. Recipients of Federal Financial Assistance. Recipients of Federal financial assistance must comply with both Section 504 of the RA and the ADA.

e. Entities Providing Services under Contract. Both public and private entities involved in the provision of services under contract are subject to ADA requirements, as follows:

(1) A public entity entering into a contractual or other arrangement with a private entity to operate fixed route or demand responsive services must ensure that the private entity meets the requirements of this part that would apply to the public entity itself, if it provided the services.

(2) A private entity which purchases or leases new, used, or remanufactured vehicles, or remanufactures vehicles for use, or in contemplation of use, in fixed route or demand responsive service under contract or other arrangement with a public entity, shall acquire accessible vehicles where the public entity would have had to do so by this part.

(3) A public entity which enters into a contractual or other arrangement with a private entity to provide fixed route service shall ensure that the percentage of accessible vehicles operated by the public entity in its overall fixed route or demand responsive fleet is not diminished as a result.

(4) A private entity that provides fixed route or demand responsive transportation service under a contract or other arrangement with another private entity shall be governed, for the purposes of the transportation provided, by the provisions of this part applicable to the other entity.

f. Private Entities Providing Taxi Service Are Covered as Follows:

(1) Providers of taxi service are subject to the requirements for private entities primarily engaged in the business of transporting people which provide demand responsive service.

(2) Providers of taxi service are not required to purchase or lease accessible automobiles. In purchasing or leasing vehicles other than automobiles, they must acquire accessible vehicles unless the provider demonstrates

equivalency as provided in Section 37.105 of 49 CFR Part 37. A provider of taxi service is not required to purchase vehicles other than automobiles in order to have a certain number of accessible vehicles in its fleet.

(3) Private entities providing taxi service shall not discriminate against individuals with disabilities by actions including, but not limited to, refusing to provide service to individuals with disabilities who can use taxi vehicles, refusing to assist with the stowing of mobility aids, and charging higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons.

g. Public Entities Operating Van Pools. Public entities operating van pools or van pools in which public entities own, purchase, or lease vehicles are subject to the requirements of 49 CFR Part 37 for demand responsive service for the general public. The provision of a vehicle usable by a person with a disability that elects to use a particular van pool is deemed the provision of equivalent service by the van pool service.

h. Entities to Which DOJ Requirements Apply. Entities subject to 49 CFR Part 37 of the DOT regulations also may be subject to DOJ regulations, 28 CFR Part 35 or 36 as applicable.

804. AIRPORT TRANSPORTATION SYSTEMS.

a. Applicability of Paragraph 803 of this chapter. Airports directly operating systems described in Paragraph 803 of this AC or contracting to do so must comply with the requirements. In addition, the airport assumes responsibility for ensuring that lessees and licensees on the airport comply with the requirements of both Titles II and III, as applicable, as part of the airport's own compliance responsibilities under Title II.

b. Designated Public Transportation. Transportation systems operated by public airport operators, which provide designated public transportation and connect parking lots and terminals or provide transportation among terminals, are subject to the requirements of 49 CFR Part 37 for fixed route or demand responsive systems, as applicable, operated by public entities.

c. Fixed Route Transportation Systems on the Airport. Public airports which operate fixed route transportation systems are subject to the requirements of 49 CFR Part 37 for commuter bus service operated by public entities. The provision by an airport of additional accommodations (e.g. parking spaces in a close-in lot) is not a substitute for meeting the requirements of 49 CFR Part 37.

d. Fixed Route Transportation Systems between the Airport and a Limited Number of Destinations. These are subject to the provisions of 49 CFR Part 37 for commuter bus systems operated by public entities.

e. Private Jitney or Shuttle Services that Provide Transportation between an Airport and a Limited Number of Destinations. When these serve in a route-deviation or other variable mode, private jitney or shuttle services are subject to the provisions of Part 37 for private entities primarily engaged in the business of transporting people which provide demand responsive service. They may meet equivalency requirements through sharing or pooling accessible vehicles among operators in a way that ensures equivalent service.

f. Other Applications.

(1) Shuttle Services and Other Transportation Operated by Private Entities on Airports. This form of transportation operated by privately-owned hotels, car rental agencies, theme parks, and other public accommodations are subject to the requirements of Part 37 for private entities not primarily engaged in the business of transporting people. Requirements for demand responsive or fixed route service may apply, depending on the characteristics of the systems.

(2) Transportation Services Provided by an Employer Solely for Its Own Employees. Such services are not subject to 49 CFR Part 37 but to the regulations of the EEOC under Title I of the ADA (29 CFR part 1630), and, with respect to public entities, to the regulations of the DOJ under Title II of the ADA (28 CFR Part 35).

(3) Transportation Provided by Private Clubs, Religious Organizations, or Entities Controlled by Religious Organizations. Transportation provided by private clubs is exempt from coverage under Title II of the Civil Rights Act of 1964 (42 U.S.C. 2000-a(e)). Transportation provided by religious organizations or entities controlled by religious organizations are not subject to 49 CFR Part 37.

(4) Transportation Provided by Subsidiaries of Parent Private Companies. Even though the parent company is not primarily engaged in the business of transporting people or is not a public accommodation, a subsidiary or operationally distinct portion of such a parent company that is primarily engaged in the business of transporting people, is subject to the applicable requirements of 49 CFR Part 37.

805. DISCRIMINATION PROHIBITED.

a. Discrimination on the basis of disability. No entity may discriminate in the provision of transportation services.

b. Denial of Use of Service for the General Public. Notwithstanding the provision of special services, no entity shall deny individuals with disabilities access to services for the general public, if they are capable of using the general service.

c. Mandatory Use of Designated Seats. No entity shall force individuals with disabilities to use designated seats if they do not wish to do so.

d. Requiring Attendants. Entities may not require an individual with a disability to be accompanied by an attendant.

e. Denying Full and Equal Enjoyment of Specified Transportation. Private entities primarily engaged in the business of transporting people and whose operations affect commerce must ensure full and equal enjoyment of specified transportation services and must comply with the DOJ regulations, 28 CFR Part 36, concerning eligibility criteria, making reasonable modifications, providing auxiliary aids and services, and removing barriers.

f. Denying Service Due to Insurance Policy Provisions. An entity shall not refuse service because its insurance company conditions coverage on requirements contrary to the ADA.

g. Avoiding Requirements through Contractual Means. Entities may not avoid ADA requirements through contractual means and must ensure that private contractors meet requirements that would apply to the public entity; that the private entity purchase accessible vehicles; that the percent of accessible vehicles will not diminish as a result of the contracting out of the service; and that the contractors ensure compliance on the part of their subcontractors.

806. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Enforcement.

(1) DOT Recipients. Recipients of Federal financial assistance from the DOT are subject to enforcement of 49 CFR Part 37 under the provisions of 49 CFR Part 27, Subpart F.

(2) Public Entities. Public entities, whether or not the recipients of Federal financial assistance, are subject to enforcement action, as provided by the DOJ.

(3) Private Entities. Private entities, whether or not the recipients of Federal financial assistance are subject to enforcement action, as provided in the regulations of the DOJ, implementing title III of the ADA (28 CFR Part 36).

c. Remedies. See Chapter 7, Paragraph 708 for remedies under Title II and Chapter 9, Paragraph 910.c. for remedies under Title III of the ADA.

807. EXCEPTIONS; WAIVERS.

a. Seriously Disruptive, Violent, or Illegal Conduct. An entity may refuse transportation to an individual with a disability who is seriously disruptive, violent, or engaging in illegal conduct, but may not do so merely because that individual has a disability which results in appearance or involuntary behavior that may offend, inconvenience, or annoy others.

b. Equivalent Facilitation. Entities wishing to employ equivalent facilitation must submit a request to the Administrator of the Federal Railroad Administration or the Federal Transit Administration, including: the entity's name, address, telephone, and contact person; the specific provision with which the entity is unable to comply; the reasons for the inability to comply; the alternative proposed that meets or exceeds the requirements with which it is unable to comply; and the public participation use to develop the alternative.

c. Over-the-Road Buses. Over-the-Road buses acquired by an entity or by a contractor to that entity must comply with Subpart G of 49 CFR Part 38, rather than with 49 CFR Part 37 (See Paragraph 812.c. of this chapter).

808. THE ACQUISITION OF ACCESSIBLE VEHICLES AND THE PROVISION OF SERVICE.

The following requirements of Part 37 affect airports on which private entities operate, as follows:

a. Private Entities Not Primarily Engaged in the Business of Transporting People, which Solicit or Purchase vehicles after August 25, 1990.

(1) Fixed Route System, Vehicle Capacity over 16 (Including Driver). Entity must ensure that the vehicle is accessible to and usable by individuals with disabilities, including wheelchair users.

(2) Fixed Route System. Vehicle Capacity of 16 or Fewer (Including Driver). Entity shall ensure accessibility as in Paragraph 808.a.(1) above, unless the system, when viewed in its entirety, meets the standard for equivalent service of Section 37.105 of 49 CFR Part 37.

(3) Demand Responsive System. Vehicle Capacity over 16 (Including Driver). Entity shall ensure accessibility as in Paragraph 808.a.(1) above, unless the system, when viewed in its entirety, meets the standard for equivalent service of Section 37.105 of 49 CFR Part 37.

b. Private Entities Primarily Engaged in the Business of Transporting People and Whose Operations Affect Commerce, Who Solicit a Purchase or Lease of New Non-Rail Vehicles after August 25, 1990.

(1) Fixed Route Systems. Entities purchasing or leasing new vehicles other than automobiles, vans that seat less than 8 persons (including the driver), or over-the-road buses, shall ensure accessibility as in Paragraph 808.a.(1) above.

(2) Demand Responsive Systems. Entities purchasing or leasing new vehicles as in paragraph 808.b.(1) above, shall ensure accessibility as in Paragraph 808.a.(1) above, unless the system, when viewed in its entirety, meets the standard for equivalent service of section 37.105 of 49 CFR Part 37.

(3) Fixed Route or Demand Responsive Systems Purchasing or Leasing Vans with a Capacity of Fewer than 8 Persons, after Feb. 25, 1992. Entities shall ensure accessibility as in Paragraph 808.a.(1) above, unless the system, when viewed in its entirety, meets the standard for equivalent service of Section 37.105 of 49 CFR Part 37, set forth below in Paragraph 808.c.

c. Equivalent Service Standard as Set Forth in 49 CFR 37.105. A fixed route or demand responsive service, as described above in Paragraph 802.i. and f. is deemed to provide equivalent service when it is provided in the most integrated setting appropriate to the needs of the individual and is equivalent to that provided to others in the following respects:

- (1) Schedules/Headways (If the System is Fixed Route)**
- (2) Response Time (If the System is Demand Responsive)**
- (3) Geographic Area of Service**
- (4) Hours and Days of Service**
- (5) Availability of Information**
- (6) Reservations Capability (If the System is Demand Responsive)**
- (7) Any Constraints on Capacity of Service Availability**
- (8) Restrictions Priorities Based on Trip Purpose (If the System is Demand Responsive)**

809. PROVISION OF SERVICE

a. Maintenance of Accessible Features by Public and Private Entities. Accessibility facilities and vehicles, including but not limited to lifts and other means of access to vehicles, securement devices, elevators, signage, and systems to facilitate communications with persons with impaired vision or hearing must be maintained in operative condition.

b. Prompt Repairs; Reasonable Attempts to Accommodate During Repairs. Accessibility features shall be repaired promptly and reasonable attempts must be made to accommodate persons with disabilities while the repairs are being made.

c. Isolated, Temporary Interruptions of Service. These are not prohibited by 49 CFR Part 37.

d. Public Entities - Keeping Lifts in Operative Condition.

(1) Maintenance. Entities shall establish a system of regular and frequent maintenance checks.

(2) Breakdowns. Must be promptly reported by operators.

(3) Inoperable Lifts. Except where removal of the inoperable lift and lack of a spare would reduce the overall transportation service of the entity, inoperable lifts shall be taken out of service before the beginning of the vehicle's next service day and be repaired promptly. Where immediate removal of the malfunctioning vehicle would reduce the overall transportation capacity, entities serving areas of 50,000 population or less may delay removal of the inoperable lift for five days; or three days, where the area has a population of over 50,000.

(4) Fixed Routes with Headways of More than 30 Minutes. Entities shall provide alternative transportation to individuals with disabilities, when a lift is not usable.

e. Lift and Securement Use. The following applies to public and private entities.

(1) Designated Securement Areas. All common wheelchairs and their users shall be transported in the vehicles designed for that purpose, but riding may be limited to designated securement locations in the vehicles, where such designated areas exist.

(2) Vehicles Subject to Guidelines for Securement. Vehicles subject to the minimum accessibility guidelines contained in 49 CFR Part 38 must use securement systems which meet those guidelines.

(3) Vehicles Not Subject to Guidelines. Other vehicles shall use securement systems that will retain the wheelchairs in the securement area.

(4) Requiring Securement. The entity may require securement.

(5) Prohibition against Denial of Transportation. The entity may not deny transportation on the grounds that a wheelchair cannot be restrained by the system in place.

(6) Recommending Transfer to a Seat. The entity may recommend but may not require that a wheelchair user transfer to a seat.

(7) Assistance by Personnel. Where necessary or upon request, the entity's personnel shall assist the individuals with disabilities with the use of securement systems, ramps, and lifts.

(8) Use of Ramp or Lift. The entity shall permit individuals with disabilities, who do not use wheelchairs, including standees, to use a vehicle's ramp or lift to enter the vehicle.

f. Other Service Requirements for Public and Private Entities Operating Fixed Route Systems.

(1) Stop Announcements. The entity shall announce stops at least at transfer points with other fixed routes; other major intersections and destination points; and intervals along a route to permit individuals with visual impairments or other disabilities to be oriented to their location.

(2) Requests for Announcements of Stops. The entity shall announce any stop upon the request of a person with a disability.

(3) Identification of Conveyances. Where vehicles or other conveyances serve the same stop, the entity shall provide a means whereby the individuals with disabilities can identify the proper vehicle or be identified to the operator of the route sought.

(4) Service Animals. The entity shall allow service animals to accompany persons with disabilities.

(5) Use of Accessibility Features. The entity shall ensure that operators make use of the accessibility features required.

(6) Accessible Transportation Information. The entity shall supply transportation information in accessible formats and through technology.

(7) Refusal of Disembarkment. The entity shall not refuse disembarkment to a passenger using a lift at any designated stop, unless the lift cannot be deployed, will be damaged if deployed, or temporary conditions at the stop not under the control of the entity preclude safe use of the stop by all passengers.

(8) Respirators and Portable Oxygen. The entity shall not prohibit an individual with a disability from traveling with a respirator or portable oxygen supply that complies with DOT rules on hazardous materials (49 CFR Subtitle B, Chap. 1, Subchapter C).

(9) Time for Boarding and Disembarking. The entity shall provide adequate time to persons with disabilities for boarding and disembarking.

g. Interim Requirements for Private Entities Operating Over-the-Road Service.

(1) Provisions of 49 CFR Part 37. Private entities operating over-the-road service shall comply with all applicable provisions of 49 CFR Part 37.

(2) Assistance. Private entities shall provide assistance by trained personnel, as needed, to individuals with disabilities in boarding and disembarking, including moving to and from the seat.

(3) Stowage of Aids in Passenger Compartments. To the extent possible, wheelchairs and other assistive or mobility aids shall be stowed in appropriate passenger compartments within the buses. When the bus is at rest at a stop, the driver or other personnel shall assist individuals with a disability with the stowage or retrieval of these aids.

(4) Stowage of Aids in Baggage Compartments. Wheelchairs and other assistive devices that cannot be accommodated in the passenger compartment, shall be stowed in the baggage compartment of the bus, unless the size of the baggage compartment prohibits this.

(5) Priority Stowage. At any given stop, individuals with disabilities shall have priority for stowage of wheelchairs and other assistive devices in the baggage compartment, but baggage or cargo already in the bus does not have to be off-loaded to make room for such devices.

(6) Advance Notice. The entity may require up to 48 hours advance notice for providing boarding assistance. If notice is not given, the entity shall make a reasonable effort to provide assistance, without delaying the bus service.

h. Equivalency Requirement for Demand Responsive Service Operated by Private Entities Not Primarily Engaged in the Business of Transporting People. A private entity not primarily engaged in the business of transporting people which operates a demand responsive system shall ensure that its system, when viewed in its entirety, provides equivalent service to individuals with disabilities, including those who use wheelchairs. The standards of Section 37.105 of 49 CFR Part 37 shall be used to determine equivalency.

i. Training Requirements. Each public or private entity which operates a fixed route or demand responsive system shall ensure that personnel are trained to proficiency, as appropriate to their duties, to operate vehicles and equipment safely and to properly assist and treat individuals in a respectful and courteous way, with appropriate attention to the differences among individuals with disabilities.

810. OTHER FORMS OF TRANSPORTATION NOT COVERED.

Since this AC has been produced for airport owners and operators, it does not include the ADA or other requirements relating to trains, commuter rail systems, dedicated bus service to commuter rail systems, university transportation systems, paratransit systems, transportation for elementary and secondary school systems, and other requirements in 49 CFR Part 37 which do not apply to airports, airport tenants or licensees, or contractors utilized by the airport owner or operator, its tenants or licensees. The AC also does not cover the construction of transportation facilities, since airports are not defined as such in the ADA. Airports are covered by the ADA as public accommodations under Subtitle A of Title II of the ADA, but not as transportation facilities under Subtitle B under Title II of the ADA.

811. APPENDIX A TO 49 CFR PART 37 - STANDARDS FOR ACCESSIBLE TRANSPORTATION FACILITIES.

Although airports are not defined as "transportation facilities" in the ADA and therefore not subject per se to the transportation requirements of Subtitle B of Title II, they are "public entities" for purposes of Subpart A of Title II. Many public airports are subject to Section 504 of the RA and to requirements of the DOT implementing regulation for the ACAA, which have been incorporated by reference into 49 CFR Part 27, the DOT regulation implementing Section 504 of the RA. Private airports that receive Federal financial assistance also are subject to Section 504 of the RA. (As "private entities" providing a "public accommodation," they also are subject to Title III of the ADA. Title III requirements are covered in Chapter 9 of this AC). In view of this, the DOT has included the following specific requirements for airports contained in Paragraph 10.4, "Airports," of Appendix A, "ADA Accessibility Guidelines for Buildings and Facilities:" References within Paragraphs 811.a. and b. below are to Appendix A of 49 CFR Part 37.

a. Paragraph 10.4.1, New Construction.

(1) Airport Elements. Elements such as ramps, elevators, or other vertical circulation devices, ticketing areas, security checkpoints, or passenger waiting areas shall be placed to minimize the distance which wheelchair users and other persons who cannot negotiate steps may have to travel compared to the general public.

(2) Circulation Path. The circulation path, including an accessible entrance and accessible route, for persons with disabilities shall, to the maximum extent practicable, coincide with the circulation path for the general public. If different, direction signage complying with 4.30.1, 4.30.2, 4.30.3, and 4.30.5 shall be available to provide the location of the nearest accessible entrance and route.

(3) Ticketing Areas. Ticketing areas shall permit persons with disabilities to obtain a ticket and check baggage and shall comply with 7.2

(4) Telephones. Where public pay telephones are provided, and at least one is at an interior location, a public text telephone shall be provided in compliance with 4.31.9. If one or more public pay telephones are located in any of the following locations, at least one public text telephone shall also be provided in that location. Compliance with this section constitutes compliance with 4.1.3(17)(c).

(i) A main terminal outside the security areas;

(ii) A concourse within the security areas; or

(iii) A baggage claim areas in a terminal.

(5) Baggage Check-in and Retrieval Systems. These shall be on an accessible route complying with 4.3, and shall have space adjacent complying with 4.2.4. If there are unattended security barriers, at least one gate shall comply with 4.13. Gates which must be pushed open by wheelchair or aid users shall have a smooth continuous surface extending from 2 inches above the floor to 27 inches above the floor.

(6) Terminal Information Broadcast Systems. The equivalent information shall be provided to persons with a hearing loss or deafness. Methods include, but are not limited to, visual paging systems using video monitors and computer technology, and for certain types of hearing loss, assistive listening systems complying with 4.33.7.

(7) Clocks. Where provided, the clocks shall have uncluttered faces. Hands, numerals, and/or digits shall contrast with their background, either light-on-dark or dark-on-light. Where mounted overhead, numerals and/or digits shall comply with 4.30.3. Clocks shall be placed in uniform locations throughout the facility to the maximum extent feasible.

(8) Security Systems. [Reserved]

b. Appendix A Requirements Referenced in Paragraph 10.4 et seq. of Appendix A, "Accessibility Guidelines for Buildings and Facilities." (Note: These have been paraphrased and condensed for easy assimilation. Where an Appendix A paragraph consists of numerous subparagraphs or does not lend itself to paraphrasing and condensation, the full Appendix A citation is provided.)

(1) Signage

(i) Paragraph 4.30.1. General requirement for compliance.

(ii) Paragraph 4.30.2. Character Proportion. Letters and numbers shall have a width-to-height ratio between 3:5 and 1:1 and a stroke width-to-height ratio between 1:5 and 1:10.

(iii) Paragraph 4.30.3. Character Height. Characters and numbers in signs shall be sized according to the viewing distance from which they are to be read. The minimum height is measuring using an upper case X. Lower case characters are permitted. Height above finished floor: Suspended or Project Overhead in compliance with 4.4.2. Minimum character height - 3 inches (75 mm) minimum.

(iv) Paragraph 4.30.5. Finish and Contrast. The character and background shall be eggshell, matte, or other non-glare finish characters and symbols shall contrast with their background - either light on dark or dark on light.

(v) Paragraph 4.4.2. Headroom. Walks, halls, corridors, passageways, aisles, or other circulation spaces shall have 80 in. (2030 mm) minimum clear head room. If vertical clearance is reduced below this height, a barrier to warn blind or visually-impaired persons shall be provided.

(vi) Additional Signage Resource. For additional information on signage, see "Guidelines for Airport Signing and Graphics, Terminals and Landside," Second Edition 1994, produced by the Air Transport Association of America, the American Association of Airport Executives, the Airports Council International-North America, and the Airports Consultants Council. For information, contact: Air Transport Association of America (ATA), 1301 Pennsylvania Avenue, N.W., Suite 1100, Washington, D.C. 2004-1707, or the ATA Distribution Center, P.O. Box 511, Annapolis Junction, MD 20701 (800-497-3326; FAX 301-206-9789).

(2) Ticketing.

(i) Paragraph 7.2(2) Counters. Ticketing counters must conform to one of the following:

(A) a portion (37 in. or 915 mm. in length) of the main counter shall have a maximum height of 37 in. or 915 mm.;

(B) an auxiliary counter with the dimensions specified above must be provided in close proximity to the main counter; or

(C) equivalent facilitation shall be provided in either the form of a folding shelf, or use of the space at the side of the counter for handing materials back and forth.

(3) Text Telephones.

(i) Paragraph 4.31.9(1). Text telephones used with a pay telephone shall be permanently affixed within, or adjacent to, the telephone enclosure. If an acoustic coupler is used, the telephone cord shall be long enough to connect the text telephone and the telephone receiver.

(ii) **Paragraph 4.31.9(2).** Pay telephones that accommodate a portable text telephone shall be equipped with a shelf large enough to accommodate the text telephone and with an electrical outlet within or adjacent to the telephone enclosure. The telephone handset shall be capable of being placed flush on the shelf. The shelf should have a minimum vertical clearance of 6 in. (152 mm).

(iii) **Paragraph 4.1.3(17)(c).**

(A) **Paragraph 4.1.3(17)(c)(i).** If four or more public pay telephones are provided at a site, and at least one is in an interior location, then at least one interior public text telephone shall be provided.

(B) **Paragraph 4.2.3(17)(c)(d).** Where a bank of telephones in the interior of a building consists of 3 or more public pay telephones, at least 1 public pay telephone in each bank shall be equipped with a shelf and outlet in compliance with 4.31.9(2).

(4) **Accessible Route. Paragraph 4.3.** See Appendix A to 49 CFR Part 37, Paragraphs 4.3 through Paragraph 4.3.11.5 for detailed requirements on accessible routes.

(5) **Clear Floor or Ground Space for Wheelchairs.** See Appendix A to 49 CFR Part 37, Paragraphs 4.2.4 through 4.2.6 for detailed requirements on clear floor or ground space for wheelchairs.

(6) **Gates and Doors.** See Appendix A to 49 CFR Part 37, Paragraphs 4.13 through 4.13.12 for detailed requirements on gates and doors.

(7) **Types of Listening Devices. Paragraph 4.33.7.** Assistive listening systems (ALS) are intended to augment standard public address and audio systems by providing signals which can be received directly by persons with special receivers or their own hearing aids and which eliminate or filter background noise. The type selected depends on the characteristics of the setting, the nature of the program, and the intended audience. Magnetic induction loops, infra-red and radio frequency systems are types of listening systems which are appropriate for various applications.

812. "AMERICANS WITH DISABILITIES ACT ACCESSIBILITY SPECIFICATIONS FOR TRANSPORTATION VEHICLES," 49 CFR PART 38.

49 CFR Part 38 provides minimum guidelines and requirements for accessibility standards in 49 CFR Part 37 for transportation vehicles required to be accessible by the ADA of 1990 (42 U.S.C. 12101 et seq.) 49 CFR Part 38 provides general requirements in Subpart A and specific requirements on three forms of transportation relevant to airport operations in three additional subparts-Subpart B, "Buses, Vans, and Systems," Subpart G, "Over-the-Road Buses and Systems," and Subpart H - Other Vehicles and Systems, covering such forms as "people movers." In this AC, the general requirements for each are presented. Other forms of transportation that are not relevant to airports are not covered in this AC. Where references are made in the general sections below to a specific section of a regulation, references also are provided to the paragraph within this AC, dealing with the topic in simplified fashion. For the other specific requirements relating to Subparts B, G, and H, see 49 CFR Part 38 and its Appendix.

a. Subpart A - General Requirements.

(1) **Equivalent Facilitation.** Departures from specific requirements of the Part 38 Guidelines is permitted where the alternative designs and technologies will provide substantially equivalent or greater access to and usability of the vehicle. Departures are considered on a case-by-case basis, as set forth in 49 CFR Sec. 37.7. (See also: Paragraph 807.b. of this chapter).

(2) **Definitions.** See 49 CFR Sec. 37.3. (See also: Paragraph 802. of this chapter for definitions relevant to airport operations.)

(3) Miscellaneous Instructions.

(i) **Dimensional Conventions.** If not noted as "minimum" or "maximum," they are absolute.

(ii) **Dimensional Tolerances.** All dimensions are subject to conventional engineering tolerances for material properties and field conditions, including normal anticipated wear not exceeding accepted industry-wide standards and practices.

(iii) **Notes.** 49 CFR Part 38 Guidelines contain no notes or footnotes. See the Appendix to the Guidelines in 49 CFR Part 38 for explanatory and advisory information.

(iv) **General Terminology.**

(A) **"Comply with"** means meet the specifications of the guidelines.

(B) **"If" or "If ***"** denotes that the specifications apply only under the conditions given.

(C) **"May"** denotes an option or alternative.

(D) **"Shall"** denotes a mandatory requirement.

(E) **"Should"** denotes an advisory specification or requirement.

b. Subpart B - Buses, Vans and Systems.

(1) General.

(i) **Coverage.** New, used, or remanufactured buses and vans (except over-the-road buses covered by Subpart G of Part 38) are covered by Subpart B of 49 CFR Part 38.

(ii) **Alterations, Modifications.** Those affecting accessibility must comply, to the extent practicable, with Subpart A of 49 CFR Part 38. This provision does not require that inaccessible buses be retrofitted with lifts, ramps, or other boarding devices.

(2) **Mobility Aid Accessibility.** See 49 CFR 38.23 through 38.39 for specific accessibility requirements applying to buses, vans, and systems.

c. Subpart G - Over-the-Road Buses and Systems

(1) **General.** New, used, and remanufactured over-the-road buses, in order to comply with 49 CFR Part 37, shall comply with Subpart G of 49 CFR Part 38. Over-the-road buses acquired by public entities or by a contractor to a public entity, shall comply with the specific requirements applicable to buses under 49 CFR Part 38, Sec. 38.23 plus Subpart G of 49 CFR Part 38.

(2) **Specific Requirements.** See 49 CFR 38.153 through 38.159 for specific requirements relating to over-the-road buses.

d. Subpart H. Other Vehicles and Systems

(1) **General.** New, used, and remanufactured vehicles and conveyances for systems not covered by other subparts of 49 CFR Part 38, shall comply with Subpart H of 49 CFR Part 38, in order to comply with 49 CFR Part 37.

(2) Alterations, Modifications. Those affecting accessibility must comply, to the extent practicable, with Subpart H of 49 CFR Part 38. This provision does not require that inaccessible buses be retrofitted with lifts, ramps, or other boarding devices.

(3) Miscellaneous. Requirements for vehicles and systems not covered under 49 CFR Part 38 shall be determined on a case-by-case basis by the DOT in consultation with the ATBCB.

(4) Automated Guideway Transit Vehicles (AGTs or People Movers). People movers in airports and other areas where AGTs travel at slow speed, shall comply with 49 CFR 38.53(a) through (c) and 38.55 through 38.61 of 49 CFR Part 38 for rapid rail vehicles and systems.

(i) Platform Warnings. In stations where open platforms are not protected by platform screens, a suitable device or system shall be provided to prevent, deter, or warn individuals from stepping off the platform between cars. Acceptable devices include, but are not limited to, pantograph gates, chains, motion detectors, or other appropriate devices.

(ii) AGT or People Mover Designs. These shall comply with 49 CFR 38 Sec. 38.173(b).

(iii) Light Rail and Rapid Rail AGT Vehicle or Systems. These shall comply with Subparts D and C of 49 CFR Part 38, respectively.

(5) Trams and Similar Vehicles and Systems.

(i) New and Used Trams. New and used trams consisting of a tractor unit, with or without passenger accommodations, and one or more passenger trailer units, including but not limited to vehicles providing shuttle service to remote parking areas, between hotels, and other public accommodations, and between amusement parks and other recreation areas, shall comply with 49 CFR 38.179. For purposes of determining the applicability of 49 CFR 37.101, 37.103, or 37.105, the capacity of such a vehicle or "train" shall consist of the total combined seating capacity of all units, plus the driver, prior to modification for accessibility. (For detailed requirements of 49 CFR 37.101, 37.103, or 37.105, see Subpart E of 49 CFR Part 37.)

(ii) Doors, Steps, Thresholds (Sec. 38.25); Interior Circulation, Handrails, and Stanchions (Sec. 38.29); Vehicle Lifts or Vehicle Ramps (Sec. 38.23(b) or (c); Securement Devices (Sec. 38.23(d)). See the cited sections in 49 CFR Part 38 for detailed information.

813. TO 899. RESERVED.

CHAPTER 9

TITLE III, NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES (NONTRANSPORTATION), AMERICANS WITH DISABILITIES ACT.

900. BACKGROUND INFORMATION.

a. Act. American with Disabilities Act, Title III

b. Lead Agency. DOJ

c. Compliance Agencies. DOJ

d. Standards. The standards set forth under Title V of the Rehabilitation Act of 1973 as amended (29 U.S.C. 790-794), the ADAAG, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and other Federal laws, or State or local laws to include State common laws that provide greater or equal protection for the rights of individuals with disabilities or individual associated with them.

901. COVERAGE.

Title III, Implemented in 28 CFR Part 36, covers the activities of public accommodations (i.e., private entities that own, operate, lease, or lease to places of public accommodation); commercial facilities; and private entities that offer certain examinations and courses related to educational and occupation certification.

902. KEY DEFINITIONS.

As used in Chapter 9 the following terms are defined by the by Title III of ADA:

a. “Commerce” means travel, trade, traffic, commerce, transportation, or communication--

- (1) among the several States;
- (2) Between any foreign country or any territory or possession and any State; or
- (3) Between points in the same State but through another State or foreign country.

b. “Commercial Facilities” means facilities--

- (1) whose operations will affect commerce;
- (2) That are intended for nonresidential use by a private entity; and
- (3) That are not--

(i) Facilities that are covered or expressly exempted from coverage under the Fair Housing Act of 1968, as amended (42 U.S.C. 3601-3631);

(ii) Aircraft; or

(iii) Railroad locomotives, railroad freight cars, railroad cabooses, computer or intercity passenger rail cars (including coaches, dining cars, sleeping cars, lounge cars, and food services cars), any other railroad cars described in section 242 of ADA, or railroad rights of way. For purposes of this definition, “rail” and “railroad” have the meaning given “railroad” in section 202(e) of the Federal Railroad Safety Act of 1970 (45 U.S.C. 431(e)).

c. **“Disability”** means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

d. **“Facility”** means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located.

e. **“Individual with a disability”** means a person who has a disability. The term “individual with a disability” does not include a individual who is currently engaging in illegal use of drugs, when the private entity acts on the basis of such use.

f. **“Place of public accommodation”** means a facility, operated by a private entity, whose operations affect commerce and fall within at least one of the 12 categories listed in paragraph 903.a. of this AC.

g. **“Private club”** means a private club or establishment exempted from coverage under title of the Civil Rights Act of 1964 (42 U.S.C. 2000a(e)).

h. **“Private Entity”** means any entity other than a public entity.

i. **“Public Accommodation”** means a private entity that owns, leases or leases to, or operates a place of public accommodation.

j. **“Public Entity”** means--

(1) Any State or local government;

(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government.

k. **“Qualified interpreter”** means a interpreter who is able to interpret effectively, accurately and impartially both receptively and expressively, using any necessary specialized vocabulary.

l. **“Readily achievable”** means easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable factors to be considered include--

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirement that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administrative or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

m. “Religious entity” means a religious organization or entity controlled by a religious organization, including a place of worship.

n. “Service animal” means any guide dog, signal dog, or other animal individually trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items.

o. “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

p. “Undue burden” means significant difficulty or expense. In determining whether an action would result in an undue burden, factors to be considered include--

(1) The nature and cost of the action needed under this part;

(2) The overall financial resources of the site or sites involved in the action; the number of persons employed at the site; the effect on expenses and resources; legitimate safety requirements that are necessary for safe operation, including crime prevention measures; or the impact otherwise of the action upon the operation of the site;

(3) The geographic separateness, and the administration or fiscal relationship of the site or sites in question to any parent corporation or entity;

(4) If applicable, the overall financial resources of any parent corporation or entity; the overall size of the parent corporation or entity with respect to the number of its employees; the number, type, and location of its facilities; and

(5) If applicable, the type of operation or operations of any parent corporation or entity, including the composition, structure, and functions of the workforce of the parent corporation or entity.

903. GENERAL APPLICABILITY.

Title III of the ADA covers the following:

a. “Public accommodation” whose operations affect commerce; and fall within one of the following 12 categories:

(1) Places of lodging.

(2) Establishments serving food or drink.

(3) Places of exhibition or entertainment.

(4) Places of public gathering.

- (5) Sales or rental establishment.
- (6) Service establishments.
- (7) Stations used for specific public transportation.
- (8) Places of public display or collection.
- (9) Places of recreation.
- (10) Places of education.
- (11) Social service center establishments.
- (12) Places of exercise or recreation.

Additionally, to be considered a public accommodation with Title III obligations, the entity must be private; and it must be owned, leased, leased to, or operated by a place of public accommodation.

b. Commercial facilities.

- (1) To be considered a commercial facility it must be nonresidential which includes the following:

- (i) **Office building;**
- (ii) **Factories; and**
- (iii) **Warehouses**

whose operations affect commerce.

- (2) **Exceptions.**

(a) Rail Vehicles and facilities covered by the Fair Housing Act are not considered commercial facilities. Additionally, exempted facilities under the Fair Housing Act are not considered commercial facility.

(b) Private air terminals are considered commercial facilities. These private air terminals would be subject to the new construction and alterations requirements of Title III of the ADA. Private air terminals may not be places of public accommodation, because the ADA statutory language exempts air transportation, but the retail stores and services establishments located within a private airport would be places of public accommodation. Additionally, private airports receiving Federal financial assistance are subject to the requirements of section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities of recipients of Federal funds. Airline operations at private airports also may be subject to the nondiscrimination requirement of the ACAA. Air terminals operated by public entities would be covered by Title II of the ADA, not Title III; but any private retail stores operated within the terminal would be places of public accommodation covered by Title III of the ADA (Americans with Disabilities Act, Title III Technical Assistance Manual, 1994 Supplement).

c. **“Private entities”** that offer examinations or courses related to applications, licensing, certification, or credentialing for secondary or post secondary education, professional, or trade purposes.

904. EXEMPTIONS.

The following areas are not covered under Title III of the ADA:

- a. Religious entities** are exempt, including places of worship.
- b. Private clubs** are exempt unless they make their facilities available for use by nonmember as places of public accommodation.
- c. State and local governments** are exempt and are covered by the Department of Justice's Title II regulation.

905. INDIVIDUAL WITH DISABILITIES.

Civil rights protection is provided under Title III of the ADA for individuals with disabilities.

- a. Three general categories of individuals with disabilities** are protected by Title III of the ADA.

- (1) Physical or mental impairment;**
- (2) Record of a physical or mental impairment; and**
- (3) Regarded as having such an impairment.**

Items one and two involve substantial limits of one or more major life activities. Item three is regardless of whether or not there is an impairment.

b. Physical impairments include the following: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, HIV disease (symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

c. Mental impairment include the following: mental or psychological, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

d. Major life activities include the following: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

e. Individuals who are engaged in the current and illegal use of drugs are not protect by Title III of the ADA.

f. Exclusions to Title III of the ADA include the following: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorder resulting from current illegal use of drugs.

906. GENERAL REQUIREMENTS.

An individual with a disability may not be discriminated against in the operation of a place of public accommodation. Individuals with disabilities may not be denied full and equal enjoyment of the "goods, services, facilities, privileges, advantages, or accommodations" offered by a place of public accommodation. The phrase mentioned in this paragraph applies to the goods and services a public accommodation provides to their customers or clients. Individuals with disabilities must be provided equal opportunities in places of public accommodations.

- a. Three broad principles** form the basis for the nondiscrimination requirements of Title III of the ADA.

- (1) Equal opportunity to participate;**
- (2) Equal opportunity to benefit; and**

(3) Receipt of benefits in the most integrated setting appropriate.

b. Requirements listed below furnish guidance on how a public accommodation can meet its obligations and establish standards for determining when the general requirement has been violated. The public accommodation should determine whether there is :

- (1) Denial of participation;
- (2) Equality in participation/benefits.
- (3) Provision of an integrated setting for a separate benefit.
- (4) Discrimination on the basis of association.
- (5). Retaliation or coercion.
- (6) Maintenance of accessible features.
- (7) Direct threat to the safety of others
- (8) Illegal use of drugs.
- (9) Smoking.
- (10) Insurance.

907. SPECIFIC REQUIREMENTS.

a. Eligibility criteria. A public accommodations can not impose eligibility requirements which may be used to screen out individual with disabilities from enjoying goods, services, privileges, advantages, and accommodations. Public accommodations may impose safety requirements which are necessary for the safe operation of the place of public accommodation. These safety requirements must be base on the actual risk and not on speculation, stereotypes, or generalizations. Additionally, if a public accommodation incurs cost in the compliance with the ADA, these costs in the form of a surcharge, may not be passed on to individuals with disabilities.

b. Modifications. Public accommodations must make reasonable modification in their policies, practices, and procedures in order to accommodate individuals with disabilities. If the modifications functionally alter the goods, services, or operations of the place of public accommodations, it is not required to make the modification. Modifications in the public accommodations policies on the use of service animals is required unless it alters or jeopardizes the public accommodation's safe operations. Additionally, it is not discriminatory for a public accommodation with a specialty in a particular area to refer an individual with a disability to a different public accommodation, if the individual is seeking a service or treatment outside the public accommodation's area of expertise; and would make a similar referral for an individual who does not have a disability.

c. Barrier removal. Barriers in public accommodations must be removed when readily achievable which is determined by the ease of accomplishment, the level of difficulty, and the expense incurred. Consideration is given on a case by case basis as determined by resources available. Safety requirements may be considered in ascertaining what is readily achievable. Barrier removable measures should comply with the ADAAG, which are contained in the appendix to the DOJ's rule. There is a continuing obligation by the public accommodation for barrier removal. Barrier removal that was initially not readily achievable may, due to changes in circumstances, become achievable at a later date.

908. NEW CONSTRUCTION.

All newly constructed places of public accommodations and commercial facilities must be accessible to individuals with disabilities to the extent that it is not structurally impracticable.

a. General. These new construction requirements apply to all those facilities occupied after January 26, 1993, for which the last application for a building permit or permit extension is certified as complete after January 26, 1992.

b. Application of ADAAG. The Department of Justice has adopted the ADAAG. These standards for new construction were issued by the ATBCB. If a standard does not exist, then the ADAAG technical standards shall be applied to the extent possible. In the case where there is no applicable requirement, then a reasonable number of at least one shall be accessible.

c. Exemption. Elevators in a building of under three stories or fewer than 3000 square feet per floor are not required with the exception of a shopping center or mall, professional office of health care providers, public transit station, or airport passenger terminal. (But see paragraph 912.c. below, regarding recipients of Federal financial assistance.)

909. ALTERATIONS.

Alterations in places of public accommodations and commercial facilities which were begun after January 26, 1992, must be accessible to the maximum extent possible.

a. Application of ADAAG. Architectural standards for accessibility in alterations are contained in the ADA Accessibility Guidelines issued by the ATBCB. The final DOJ Title III regulation incorporates these standards.

b. Path of Travel. When the primary function area is altered, it must comply with the ADAAG, and there must be an accessible path of travel from the altered area to the entrance. Additionally, there are requirements for a path of travel to the altered area to include bathrooms, telephones, and drinking fountains serving the area. The accessibility cost shall not be disproportionate to the overall cost of the original alteration.

c. Exemption. The elevator exemption is the same as for new construction (see paragraph 908.c. above).

910. COMPLIANCE, ENFORCEMENT, AND REMEDIES.

a. Enforcement. The ADA established two avenues for enforcement of the requirements of title III.

(1) **Private Suits.** Suits of this type are brought by individuals to stop discrimination or threaten discrimination.

(2) **Suits by the DOJ.** The DOJ may bring suit if there is reasonable cause to believe that there is a pattern or practice of discrimination, or discrimination that raises an issue of general public importance.

b. Investigation and Compliance Reviews. DOJ is charged with investigating alleged violations of Title III and conducting periodic reviews of compliance of covered entities. Complaints may be sent to the following:

Public Access Section
Civil Rights Division
U.S. Department of Justice
P.O. Box 66738
Washington, D.C. 20035-6738

c. Remedies. In suits by the Attorney General, the courts may grant any equitable relief it deems appropriate; monetary damages (excluding punitive damages); and may impose a civil penalty (not to exceed \$50,000 for the first offense and \$100,000 for each subsequent offense). The court also may award attorney’s fees, litigation expenses and costs.

In private suits, the court may award a permanent or temporary injunction, restraining order, or other order, but not monetary damages or civil penalties. In cases involving readily achievable barrier removal, accessibility in new construction, and alterations, remedies may include orders to correct the deficiency or violation. The remedy also may include requiring an auxiliary aid or service, policy modification, or alternative methods for barrier removal.

911. TECHNICAL ASSISTANCE.

The ADA recognizes the necessity of educating the public about its rights and responsibilities under the Act and requires the DOJ, in consultation with other agencies, to provide technical assistance to assist covered entities and individuals with disabilities in understanding their rights and responsibilities under the ADA.

The purpose of technical assistance is two fold: to inform the public (including individuals with rights protected under the ADA) and the covered entities about their rights and duties; and to provide information about cost-effective methods and procedures to achieve compliance.

DOJ has developed and continues to develop technical assistance through publication, exhibits, videotapes and audiotapes, and public service announcements. It has developed a number of technical publications, to include the Americans with Disabilities Act, Title III Technical Assistance Manual, Nov. 1993, 1994 Supplement, from which this section 911 was developed. DOJ has established a Speaker Bureau to provide speakers for events such as conferences, workshops, and training programs. Additionally, DOJ in conjunction the EEOC has developed the “Americans with Disabilities Handbook”, Oct. 1991, which provides an analysis of 28 CFR 36, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities.

For additional information on technical assistance, contact:

Office on the Americans with Disabilities Act
Civil Rights Division
U.S. Department of Justice
P.O. Box 66118
Washington, D.C. 20035-6738
(800) 514-0301 (Voice)
(800) 514-0383 (TDD)
(202) 514-6193 (Electronic Bulletin Board)

912. CONFLICTS, RESOLUTIONS, AND UNRESOLVED QUESTIONS.

a. The treatment of mixed-use facilities are discussed in the ADA Handbook, October, 1991. The list of 12 categories in section 307(7) of the ADA are the activities engaged in or services provided which qualify a facility as a place of public accommodation. Many facilities are mixed. Some large hotels may have separate residential and short term stay wings. If separated the residential wing would be covered by the Fair Housing Act and the short term wing by the ADA. If the residential and short term are intermixed, then both the Fair Housing Act and the ADA may apply. Determinations shall be made on a case by case basis.

b. Additionally, “single room occupancy hotels” are subject to the same rules as stated above in paragraph 912.a. If the “single room occupancy hotel” is providing social services to their guests through Federal or State grant programs, then they are covered by the ADA as a place of public accommodation regardless of the length of stay.

c. If Federal financial assistance is provided to a place of public accommodation, then the requirements of section 504 of the Rehabilitation Act and the ADA shall apply.

913. CERTIFICATION.

The Attorney General has been authorized under the ADA to certify State laws, local building codes, or similar ordinances. In order for these State laws, local building codes, or similar ordinances to qualify for certification, they are required to meet or exceed the Title III accessibility requirements.

a. There are five main advantages to obtaining certification:

(1) When an entity is designing, constructing, or altering a building in accordance with an applicable State or local code that has been certified by the DOJ, the designer or contractor will need to consult only that one code, in order to determine the applicable Federal, State, and local requirements.

(2) The covered entity will have some degree of assurance in advance of construction or alteration that the ADA requirements will be met.

(3) If a covered entity is subject to a lawsuit, compliance with a certified code will be rebuttable evidence of compliance with the ADA.

(4) A State or local agency enforcing a certified code is for practical, but not legal, purposes facilitating compliance with the ADA and helping eliminate confusion and possible inconsistencies in standards.

(5) The amount of necessary litigation can be reduced, particularly if a State or local code agency has an administration method of effectively handling complaints concerning violations of its code.

(These five advantages were taken in their entirety from the ADA Title III, Technical Assistance Manual, November, 1993, 1994 Supplement)

b. The certification of State laws, local building codes, or similar ordinances does not mean a facility will be constructed in accordance with the code. Building a facility in accordance with certified code does not prevent lawsuits concerning accessibility by DOJ or by an individual.

c. State and local officials are not authorized to enforce the ADA for the Federal government.

914. TO 999. RESERVED.

CHAPTER 10.

TITLE V, MISCELLANEOUS PROVISIONS

1000. BACKGROUND INFORMATION.

a. Act. Americans with Disabilities Act, Title V

b. Lead Agencies. The Department of Justice, in conjunction with the lead agencies established under each title of the ADA, and in regard to the Legislative Branch, the Senate and the House of Representatives, and their instrumentalities, defined as: the Architect of the Capitol, the Congressional Budget Office, the General Accounting Office, the Government Printing Office, the Library of Congress, the Office of Technology Assessment, and the United States Botanic Garden.

c. Compliance Agencies. See Paragraph 1002, Compliance, Enforcement, and Remedies.

d. Standards. In general, Title V of the ADA prohibits use of a lesser standard than applies under Title V of the RA, as amended, or the regulations issued by Federal agencies pursuant to the RA. Title V of the ADA calls for the ATBCB to issue minimum guidelines, within 9 months after the enactment of the ADA, to supplement the existing Minimum Guidelines and Requirements for Accessible Design, for purposes of Title II and III of the ADA.

1001. COVERAGE.

In addition to the subjects covered in specific paragraphs of Chapter 9 of this AC, Title V covers the following miscellaneous matters:

a. Relationship to Other Laws. Nothing in the ADA invalidates or limits the rights, remedies, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by the ADA. Nothing in the ADA precludes the prohibition of or the imposition of restrictions on, smoking in places of employment covered by Title I, in transportation covered by Title II or III, or in places of public accommodation covered by Title III.

b. Insurance. Titles I through IV of the ADA do not prohibit or restrict insurers, hospitals, medical service companies, health maintenance organizations, or any agents or entities that administer benefit plans, or similar organizations from underwriting risks, classifying risks, or administering such risks that are based on or not inconsistent with State law.

c. Benefit Plans. Similarly, Titles I through IV of the ADA do not prohibit the establishment, sponsorship, observation, or administration of a bonafide benefit plan that is based on or not inconsistent with State law or with State laws that regulate insurance.

d. Non-Immunity for States. A State shall not be immune under the 11th Amendment of the Constitution of the United States from an action in a Federal or State Court of competent jurisdiction for a violation of the ADA. Remedies both at law and in equity are available.

e. Technical Assistance. Title V charges the Attorney General, in consultation with the EEOC, the DOT, the ATBCB, and the FCC, to develop a plan for the provision of technical assistance. The Attorney General may obtain the assistance of other Federal agencies, including the National Council on Disability, the President's Committee on Employment of People with Disabilities, the Small Business Administration, and the Department of Commerce. Other lead agencies also have responsibility for technical assistance.

f. Federal Wilderness Areas. The National Council on Disability is charged with conducting a study and report on the ability of individuals with disabilities to use and enjoy the National Wilderness Preservation System, established under the Wilderness Act, 16 U.S.C. 1131 et seq.

g. Current Illegal Use of Drugs, Homosexuality, Bisexuality, Transvestism. Title V specifies that these conditions or activities are not defined as "disabilities." Also excluded are transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders; compulsive gambling, kleptomania, or pyromania; or psychoactive substance use disorders resulting from current illegal use of drugs.

The ADA also amends the Rehabilitation Act to make it consistent with the ADA on the matter of the current illegal use of drugs or the use of alcohol in a manner that would constitute a direct threat to property or the safety of others. The amendments also allow educational institutions to take disciplinary action against students with disabilities who currently are engaged in the illegal use of drugs or in the use of alcohol, to the same extent that action is taken against students without disabilities. (Note: Persons who have successfully completed rehabilitation programs; or are actively participating in one and are not engaged in the illegal use of drugs or the use of alcohol; or who are erroneously regarded as engaging in such use, cannot be excluded from the definition of a "person with a disability.")

e. Health and Other Services. Rehabilitation services cannot be denied for drug users, if they are otherwise entitled to them.

1002. COMPLIANCE, ENFORCEMENT, REMEDIES.

a. Retaliation. Under Title IV, the compliance agencies, remedies, and procedures specified in Sections 107, 203, and 308 of the ADA are available to aggrieved persons alleging retaliation, interference, coercion, or intimidation for exercising their rights or aiding others in the exercise of their rights under Titles I, II, or III of the ADA.

b. United States Senate. In the Senate, employment cases are investigated and adjudicated by the Select Committee on Ethics, pursuant to S. Res. 338, 88th Congress, as amended, or such other entity as the Senate may designate. Title IV specifies that in the Senate, the rights and protections provided pursuant to the ADA, the CRA of 1990, the CRA of 1964, the Age Discrimination in Employment Act of 1967, and the RA apply.

c. House of Representatives. In regard to the House of Representatives, Title IV specifies only that the rights and protections under the ADA shall apply. Investigation and adjudication are performed in accordance with House Resolution 15 of the 101st Congress, as agreed to January 3, 1989, or any other provision that continues in effect the provisions of, or is a successor to, the Fair Employment Practices Resolution (House Resolution 558 of the 100th Congress, as agreed to October 4, 1988.).

d. Non-Employment Matters in the Congress. In matters other than employment, the Architect of the Capitol is charged with establishing remedies and procedures to be utilized with respect to the rights and protections provided by the ADA. (Note: Nothing in Title V alters the enforcement procedures for individuals with disabilities provided in the General Accounting Office Personnel Act of 1980 and implementing regulations.)

e. Attorney's Fees. In any action or administrative proceeding commenced pursuant to the ADA, the court or agency may allow the prevailing party, other than the United States, a reasonable attorney's fee, including litigation expenses, and costs, and the United States shall be liable for the foregoing the same as a private individual.

1003. TO 1199. RESERVED.